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CONSTRUCTION SAFETY, HEALTH, AND EDUCATION IMPROVEMENT ACT

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Mr. KENNEDY, from the Committee on Labor and Human Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 930]

The Committee on Labor and Human Resources, to which was referred the bill (S. 930) to amend the provisions of the Occupational Safety and Health Act of 1970 to establish an Office of Construction Safety, Health, and Education within OSHA, to improve inspections, investigations, reporting, and recordkeeping in the construction industry, to require certain construction contractors to establish safety and health programs and onsite plans and appoint construction safety specialists, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

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I. Summary of the Bill

S. 930, the Construction Safety, Health, and Education Improvement Act, amends the Occupational Safety and Health (OSH) Act to better protect the safety and health of the Nation's 4 million workers employed in the building and construction industry. The present OSH Act, and its implementation and enforcement, have been unable to make a significant impact in reducing the vast numbers of fatalities and serious injuries and illnesses suffered by workers in this industry. This Act amplifies the OSH Act by adding provisons addressed to the peculiar characteristics of the construction industry.

S. 930 establishes within the Occupational Safety and Health Administration (OSHA) the Office of Construction Safety, Health, and Education to ensure safe and healthful working conditions in the performance of construction work. The bill also establishes within OSHA the position of a Deputy Assistant Secretary of Labor for Construction, appointed by the Secretary, who shall coordinate the activities of the new Office with the activities of other offices and directorates within OSHA to the extent that those activities relate to the construction industry. The Deputy Assistant Secretary of Labor for Construction shall also coordinate the efforts of the existing Advisory Committee on Construction Safety and Health with those of the new Office and with the construction-related activities of other OSHA offices and directorates.

The bill seeks to ensure that there will be a sufficient number of well-qualified OSHA personnel to inspect construction worksites. The Secretary is directed to employ such additional inspectors as are necessary to carry out OSHA's duties under the OSH Act, and requires the Secretary, with the advice of the Advisory Committee, to determine the necessary qualifications for such inspectors. The bill states that at a minimum, such qualifications shall include a thorough understanding of OSHA construction standards, and at least five years of experience working in the construction industry.

Because most construction contractors in this country are not large employers—the vast majority have fewer than 50 employees—the bill calls for a small business liaison within OSHA to provide assistance to construction employers to better enable them to comply with OSHA construction standards.

One of the major features of S. 930 is to enable OSHA to allocate its enforcement resources where they are most needed. Thus, the bill requires the Agency to establish priorities for construction worksite inspections based on the degree of potential for fatalities or serious injuries at particular sites or in particular construction operations. To enable OSHA to do this, it requires accurate and timely information to be submitted to the Agency containing certain basic information regarding projects that are to commence shortly; reports of construction employees killed or seriously injured on the job or of structural failures; and reports when projects are completed, or at annual intervals, or fatalities, serious injuries, and structural failures which have occurred. A definition of the term "serious injury" is contained in the bill which includes seri-

ous work-related illness. OSHA is required to conduct an inspection of the site no later than 24 hours after receiving a report of a fatality, serious injury or structural failure. Provisions are contained in the bill to prevent the destruction of any evidence that would assist OSHA in the investigation of the incident.

S. 930 defines "construction work" in a manner identical to OSHA's definition in its regulations, 29 C.F.R. § 1910.12, and as it is defined in the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 333, with one exception: For purposes of this Act, "construction work' does not include work performed under a contract between a construction employer and a homeowner for work on the homeowner's own residence, unless the work involves certain specified operations which pose a risk of death or serious injury, e.g., construction of trenches and excavations, erection and dismantling of scaffolding, demolition, operation of cranes and derricks. Thus, the bill does not cover most work performed on homeowners' residences.

S. 930 provides for a system of safety monitoring and coordination on multi-employer construction projects. It requires the designation, in a contract with the construction owner, of a person who shall have overall responsibility for safety and health at the construction worksite. This person (called a "project constructor") may be a construction manager, a prime contractor, general contractor, or some other firm which is willing to assume this responsibility. The project constructor must establish and implement, for the project as a whole, a written safety and health plan that meets specified requirements, including the designation of an individual referred to as a "project safety coordinator". The project constructor may delegate some or all of its duties to the project safety coordinator but may not thereby escape from its responsibility for project-wide safety and health. Construction safety and health plans must identify the potential for, and provide instructions for the prevention of, hazards, including the means to ensure stability of structures during the construction process. The project safety coordinator, on behalf of the project constructor, shall implement a permit procedure for certain especially dangerous operations to ensure that employers engaged in those operations are thoroughly qualified to perform their work in a manner protective of the safety and health of their own employees and without endangering other persons on the project.

The Secretary's regulations under the OSH Act presently require every construction employer to establish and maintain a safety and health program providing for frequent and regular inspections of the jobside, and materials and equipment on the site, to be made by a "competent person", and for instructing each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazard or other exposure to illness or injury. "Competent person" is defined in those regulations as one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them. These regulations have received little enforcement. Under S. 930, these regulations would be enshrined in a

federal statute, and the Secretary would be mandated to adopt and enforce them. S. 930 provides that the project constructor is required to review and approve the safety and health program of every employer on the project before that employer commences work. The bill also requires that the program provide for the presence of a competent person at all times that the employer is engaged in construction work, and that such competent person is authorized to take all actions necessary to eliminate hazards, including the stoppage of work or removal of affected employees if necessary. Employers' programs must also provide a procedure under which employees and employee representatives may obtain an inspection or a written evaluation of a perceived hazardous condition or harmful substance during the construction process. Employers' programs also authorize the project constructor, where it is determined that an imminent danger exists, to stop work at, or remove affected construction employees from, the affected area.

Rather than being too specific as regards the requirements for project-wide safety and health plans and employer safety and health programs, S. 930 directs the Secretary to promulgate regulations implementing the basic requirements in the Act. In view of the differences in the type of construction employers and the nature of work which they perform, the bill requires the Secretary, in promulgating the regulations, to take into consideration firms of different sizes, types of work, and past safety records (including records of compliance with safety and health laws and regulations).

In order to ensure that the requirements of the legislation are carried out with dispatch, S. 930 directs the Secretary to issue interim regulations not later than 60 days after the effective date of the Act. Final regulations following public notice and comment, must be issued not later than 180 days after the effective date of the Act.

Well-trained OSHA construction inspectors and project constructors are crucial for safe construction workplaces. The bill establishes within OSHA a Construction Safety and Health Academy which shall be responsible for the training of OSHA construction inspectors and other persons that OSHA, with the advice of the Advisory Committee on Construction Safety and Health, deems appropriate. In carrying out this function, the Academy may enter into cooperative agreements with outside public and private organizations.

The Advisory Committee on Construction Safety and Health, which was established in 1969 by the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327 et seq., can, if permitted by the Secretary, play an important role in promoting construction safety and health. S. 930 strengthens the Committee's ability to fulfill its responsibilities by providing it with authority to schedule meetings and set meeting agendas, conduct research, retain experts and consultants, and exercise control over other administrative matters necessary to fulfill its duties.

S. 930 contains provisions paralleling those in Sections 18 and 23 of the OSH Act intended to promote the establishment by states of safety and health plans for the construction industry which shall be at least as effective as Federal OSHA's program.

S. 930 also provides for the submission by the Secretary to the Congress of an annual report describing OSHA's activities under this Act. This parallels the annual report required by Section 26 of the OSH Act for the Agency's overall operations.

In addition to the annual report, the bill requires the submission of a report by the Secretary to the President following the completion of 3 years of operation of the new Office of Construction Safety, Health, and Education. This report will describe the status, at that time, of employee safety and health in the construction industry and contain a recommendation as to whether or not a separate Construction Industry Safety and Health Administration, headed by an Assistant Secretary of Labor, should be established within the Department of Labor.

Finally, S. 930 seeks to enlist the Secretary in a more effective enforcement program of safety and health requirements for federal and federally-assisted construction work. In addition to the OSH Act, the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327 et seq., passed in 1969, governs safety and health on federal and federally-assisted construction projects. S. 930 requires the Secretary to submit recommendations to the Congress regarding legislative changes to make the safety records of construction contractors a criterion to be considered in the awarding of federal construction contracts.

II. Background and Need for Legislation

In 1969, in recognition of the hazardous nature of construction work and the large numbers of worker fatalities and severe injuries, Congress enacted the Federal Construction Safety Act as an amendment to the Contract Work Hours Standards Act, 40 U.S.C. § 327 et seq. This Committee's report on that legislation noted:

> The 2,800 construction workers killed on the job in 1968 represents the highest death rate for an industry in the United States.
>
> Since 1959 there has never been less than 2,300 workers killed per year. Since 1959 there has never been less than 209,000 construction workers disabled per year.
>
> The construction industry includes 4 million workers and another 20 million workers depend on this industry—one-third of the Nation's workforce. The annual economic dollar value of this industry is 10% of the gross national product—or $91 billion. Work accidents will cost approximately $3 billion in 1969.
>
> Despite the magnitude of the problem, both in terms of money lost to the economy through on-the-job accidents and in terms of human suffering, there exists today no nationally accepted set of standards concerning safety and construction, nor does the Federal Government have the authority to promulgate or enforce uniform standards on construction contracts. At the same time, many existing State safety laws do not adequately protect workers.

"Promotion of Safety and Health in the Building Trades and Construction Industry," Senate Rep. No. 91-320, 91 Cong., 1st Sess.

(July 15, 1969), p. 2, contained in "Committee Print, Legislative History of the Federal Construction Safety Act," Committee on Labor and Public Welfare, United States Senate, 91st Cong., 1st Sess. (1969), p. 96.

The 1969 legislation was very brief and general in its terms. It simply required that it be a condition of each contract and subcontract for federal and federally-assisted construction work that no contractor shall require any laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards promulgated by the Secretary. The 1969 legislation established the Advisory Committee on Construction Safety and Health, charged the Committee with advising the Secretary in the formulation of construction safety and health standards and other regulations, and with respect to policy matters arising in the administration of that Act, and provided the Secretary with authority to enforce the legislation through the mechanism of curtailing opportunities of non-complying employers in the federal contract procurement process.

One year later, in 1970, Congress enacted the Occupational Safety and Health (OSH) Act to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. § 651(b). The OSH Act is a comprehensive piece of legislation, applicable to all industries, including the construction industry, except mining. Unlike the 1969 Act, the OSH Act is quite detailed and specific in its substantive and remedial provisions, containing criteria for safety and health standards and provisions for administrative and judicial enforcement. It applies to public and private construction work. But since its coverage is general, applying as it does to all industries, there are no specific provisions tailored to the special characteristics of the construction industry, including those which make that industry so hazardous.

It is now 1990, more than 20 years since the passage of the Construction Safety Act and the OSH Act. And, tragically, the statistics noted by this Committee in its 1969 Report, have not improved. Given two decades to remedy the carnage in the construction industry, virtually no progress has been made. Since 1970, there have been 47,500 deaths and 5 million serious injuries to construction workers. In 1969 construction workers constituted 4% of the total work force and accounted for 15% of the total fatalities. Today, construction workers constitute 5% of the work force and account for 26% of the fatalities. And the problem is not limited to large construction projects employing large numbers of employees. OSHA's statistics indicate that 45% of all fatalities and 42% of all serious violations of the OSH Act are attributable to construction workplaces with 25 or fewer employees.

Periodically—unfortunately, triggered by large-scale construction tragedies—Congressional committees have conducted oversight hearings to study the problem, examine OSHA's performance, and consider solutions. Hearings were held by the House Subcommittee on Compensation, Health and Safety in 1978, following the collapse of a cooling tower in West Virginia in which 51 construction workers perished. The same subcommittee held hearings in 1987, follow-

ing the collapse of an apartment project in Bridgeport, Connecticut, killing 28 construction workers. In 1988, this Committee held oversight hearings on the general state of occupational safety and health in the Nation and OSHA's performance in the 19 years since the OSH Act was passed. Safety and health in the construction industry was a major part of those hearings.

Always during the oversight hearings mentioned above, OSHA has taken the position that further legislation was unnecessary and that all that was required were administrative initiatives. Prodded by these oversight hearings administrative actions of one sort or another were taken to deal with complaints raised by Construction employees. Skeptical observers might claim that like a ritual, well-publicized construction tragedies would be followed by congressional oversight hearings which would be followed by administrative initiatives by OSHA. In any event, OSHA's administrative initiatives have led to no appreciable improvement discerned in the thing that matters most: preservation of our human resources—the lives and well being of the construction workers in this country.

The oversight hearings that followed the tragedies mentioned above, however, have been helpful in focusing attention on the existing deficiencies in the present law and its implementation. Testimony by the AFL–CIO's Building and Construction Trades Department (BCTD) at those hearings and in the hearings held by this Committee on S. 930 in November 1989, as well as testimony by several of BCTD's affiliated national building trades unions, have pointed out a major reason why existing law and regulation have been inadequate to the task. They have explained how the construction industry differs from other industries in a significant way. In other industries the owner and employer are synonymous. The managerial structure needed to ensure job safety in those industries in a structure that is coextensive with the individual employer. The construction industry, however, is a multi-employer industry. True, it is essential for every employer to maintain an adequate safety program for is own employees. But beyond that, the construction industry requires a system that guarantees that there is someone on a construction project who is accountable and responsible for safety on the project as a whole. What the present OSH Act fails to address is the interrelated nature of employers' work in the construction industry. And, what was an inadequate statute in this regard when it was enacted in 1970 has become even more so as the construction industry has become more specialized and complex. It is possible to find more than 100 contractors and subcontractors on a large project today. Legislation must ensure that someone is accountable for the coordination of safety among all employers and employees on a construction project.

The required management safety structure on a construction project must begin with the owner of that project who engages contractors to perform construction work. That is the entity who through direct hire or contractural arrangement can ensure that safety considerations permeate the entire construction process no less than considerations of project cost, timeliness and quality of product. As John A. Focht, Jr., President of the American Society of Civil Engineers stated at the hearing, "[T]he owner has to be very, very much more actively involved in this process." Testimony

Before Senate Committee on Labor and Human Resources 103 (November 16, 1989).

This important fact is recognized by the Business Roundtable, an organization of large construction users. In a 1982 report, "Improving Construction Safety Performance," which was part of its "construction industry cost effectiveness (CICE) project," the Business Roundtable stated:

> The primary purpose of this study report is to demonstrate that owners have, in addition to their moral commitment, an economic incentive to help reduce the number of accidents that occur on their construction projects. The high cost of accidents gives owners as construction users good reason to concern themselves with the safety efforts of the contractors they hire. Past research has shown that accidents are, to some extent, controllable by all levels of construction management. Reasonable reductions in the frequency and severity of accidents would lower the $8.9 billion cost of accidents by as much as $2.75 billion or 8% of direct construction labor payroll, a year. So there is ample economic incentive, in addition to humanitarian concerns, for owners to play an important role in construction safety.

"Improving Safety Performance, a Construction Industry Cost Effectiveness Project Report, Report A-3" (The Business Roundtable, January 1982), p. 3.

In May 1988, the Business Roundtable restated its Construction Industry Cost Effectiveness principles, including:

> Owners and contractors, who have adopted CICE recommendations, even in part, have achieved savings far in excess of their cost. Safety performance and quality have improved. Schedules have been met. CICE has worked for small organizations and small jobs, just as it has for the nation's largest owners and contractors.
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> * * * * *
>
> The owner puts the money in. He has the economic incentive and the means to fix the goals, set the standards and control the process.
>
> Owner-driven projects—those in which the owner establishes his expectations, exercises his authority firmly and knowledgeably, and accepts responsibility for legitimate costs—are most likely to be cost-effective. They also are usually best for contractors and craftsmen as well.

"CICE, The Next Five Years and Beyond, a Construction Industry Cost Effectiveness Project Report" (The Business Roundtable, May 1988), pp. 3, 9.

There is a recognized need, therefore, for the owner's involvement at least to the extent of hiring or designating by contract a person, specially trained and experienced in construction processes as well as in construction safety, to assume the responsibility for securing a safe project. That person must then ensure that all employers comply with applicable OSHA standards, carry out their

work in a safe manner and protect not only their own employees from jobsite hazards but prevent other employees on the project from being exposed to hazards those employers may cause.

To accomplish these objectives, construction site safety must be planned well in advance no less than other key elements of a successful construction project. Prospective employers must know in advance what will be expected of them by way of safe and healthful practices. This can best be a accomplished if a written plan is drawn up for the project in advance which sets forth potential hazards during the construction process and instructs in pertinent construction processes to prevent such hazards. Such a hazard analysis and construction process plan must be contained, or incorporated by reference, in the contract documents for the project, including the solicitation for bids (if jobs are let by the bidding process). In this way, "bad actors" or unsafe contractors will not be given a competitive advantage over employers willing to commit the necessary resources to complete their work in a safe manner. Following execution of a construction contract, the project constructor must examine the employer's written safety and health program to ensure that it complies with applicable law and OSHA standards, is consistent with the overall project plan developed by the project constructor, and will not cause hazards to the employees of other employers. There is a special need where operations are to be performed which have high potential for deaths, serious injury or serious illness. In those situations, a more formal type of approval process on the part of the project constructor should be required.

It was generally acknowledged at the hearings before the Committee that one serious deficiency in OSHA's implementation of the OSH Act in the construction industry has been the Agency's failure, or inability to target its inspection resources in an efficient manner. To do this, the Agency needs information it is not presently getting. The Agency needs to know where the projects and operations are which pose particular risks, and whether these risks are caused by the nature of such projects or operations or the fact that construction owners or employers with a history of non-compliance, or a high incidence rate of fatalities, injuries or illnesses, are involved.

Under OSHA's present regulations and practices, there is no uniform or adequate system whereby OSHA can learn in advance where projects and operations are occurring, not to say informaton regarding them. As was testified to at the hearing, the Dodge reports are not even adequate to identify the existence of construction projects on a timely basis. Testimony of Barry Cole before the Senate Committee on Labor and Human Resources 106 (November 16, 1989).

According to OSHA data, 46 percent of OSHA inspections of construction worksites result in either no citation or a citation for a non-serious violation.

OSHA should be notified in advance concerning construction work about to begin. It should be sufficient for certain basic information regarding the project to be transmitted to the appropriate OSHA office in the relevant geographical area by the project constructor. If OSHA is in possession of such information, it will be able to choose and schedule inspections more efficiency.

OSHA requires employers to report serious injuries on a construction site only if 5 or more employees are hospitalized. Critical injuries to less than 5 employees are not required to be reported. And, incidents such as a building collapse or other structural failures which could have resulted in deaths or serious injuries also need not be reported. This is not adequate. There was testimony at the hearing that has there been a requirement for the reporting of a serious injury, the Bridgeport tragedy probably would not have occurred. Just a year beofre the Bridgeport collapse, the same employer was working 30 miles away engaged in the same lift-slab construction operation. A worker lost a finger under circumstances similar to those which began a chain reaction and subsequently caused 28 deaths at Bridgeport. Had a report been filed concerning the earlier incident, and had OSHA been apprised that the same employer shortly would be performing the same operation at L'Ambiance Plaza, OSHA could have averted the subsequent collapse. Testimony of Christopher Shays, United States Representative from Connecticut, before the Senate Labor and Human Resources Committee 7 (November 16, 1989).

Where projects continue for an extended time, periodic reports, such as annually, should be filed updating this basic information. And at the completion of a project, the project constructor should advise the Agency regarding such completion and should provide OSHA with information regarding fatalities, serious injuries and structural failure which have occurred in the course of the project. This information will be useful to OSHA in targeting future inspections of projects or operations similar in nature or of projects owned and operations performed by the same constuction owner and employers. This information will also serve as a useful double check on employer compliance with the reporting requirements of job-site incidents discussed above.

These, then, are the two key needs that are addressed by S. 930: An internal system of safety management to coordinate worker safety among multiple employers on a construction project, and an improved reporting system to allow OSHA to establish a fair and effective targeting system of inspections.

Other deficiencies in the OSH Act's application to the construction industry were brought to light at the Committee's oversight hearing in 1988 and the hearing on S. 930 in November 1989. These are as follows:

1. The Agency must respond more expeditiously to employer reports of fatalities and serious injuries, and preservation of the site must be assured following such an incident so as to allow OSHA to conduct a meaningful inspection.

2. The Advisory Committee on Construction Safety and Health, composed of representatives from Labor, Management, and State and Federal occupational safety and health agencies, could play an important role in promoting construction safety. For a long time, however, there have been complaints from these represented interests on the Committee that OSHA has not made effective use of the Committee. The 1969 Act established the Committee and charged it with advising the Secretary "in the formulation of construction safety and health standards and other regulations, and with respect to policy matters arising in the administration of this

section." When the OSH Act was passed in 1970, the Advisory Committee assumed similar responsibilities under that Act. 40 U.S.C. § 333(e)(2). There is a need for legislation to ensure that the Advisory Committee is able to perform its congressionally intended role.

3. A further important step that is needed is to raise the level of expertise of OSHA's construction inspectors. The Committee is informed that few of OSHA's inspectors have first hand knowledge of and experience with construction operations and processes. There is needed both a focused program to train such inspectors and a prescribed set of qualifications. Actual experience plus training are essential. We believe a minimum of 5 years experience working in the construction industry should be required. Other requirements should be established by the Secretary with the advice of the Advisory Committee.

4. Inasmuch as S. 930 establishes requirements for project constructors and project safety coordinators to monitor and supervise construction site safety, there will be an immediate need for training and certification programs to produce firms and individuals qualified to perform these functions.

OSHA presently operates a training institute in Desplains, Illinois. The Institute is part of OSHA's Office of Training and Education. While the Institute has provided training to OSHA inspectors in construction subjects, in view of the significantly greater scope of training and education called for by the Act, as well as the need, for the first time, to train project constructors and project safety coordinators, a different mechanism is necessary. While this new mechanism could, if the Assistant Secretary wishes, be part of OSHA's Office of Training and Education, line authority should be exercised over this body by the Deputy Assistant Secretary for Construction who is created by the bill. A construction safety and health academy, with OSHA, would be able not only to offer training and instruction directly, but to review and provide accreditation to training providers and education programs that may be operated by interested private and public organizations.

5. Federal and federally-assisted construction work, which is subject to the 1969 Act, makes up approximately 25% of all construction performed in this country. Yet, for over 20 years, Secretaries of Labor have failed to use these statutory provisions to promote better safety and health practices by contractors doing this work. The 1969 Act holds out great promise for improved construction safety on Federal jobs by using the Federal contract process to ensure that Federal contracts are let only to contractors whose safety programs and records are of the highest order. There is a need, therefore, to implement this Statute in a creative manner.

III. History of the Legislation

On May 4, 1989, Senator Dodd introduced S. 930, a bill to amend the OSH Act to establish an office of construction safety, health, and education within OSHA, to improve inspections, investigations, reporting, and recordkeeping in the construction industry, to require certain construction contractors to establish construction safety and health programs and onsite plans and appoint construc-

tion safety specialists, and for other purposes. Senators Lieberman, Adams, Pell, Metzenbaum, Simon, Mikulski, Kennedy and Akaka became co-sponsors of S. 930. The bill was referred to the Committee on Labor and Human Resources. A hearing on S. 930 was held on November 16, 1989. The legislation was considered at an executive session of the Committee on Labor and Human Resources on September 26, 1990. Senator Dodd proposed an amendment in the nature of a substitute. The substitute amendment was accepted by the Committee on Labor and Human Resources on September 26, 1990.

IV. Hearings

Public hearings in the nature of overnight hearings of the Occupational Safety and Health Administration was conducted by the Committee on Labor and Human Resources in April 1988. The hearing regarding the construction industry took place on April 26, 1988. The following individuals presented testimony:

The Honorable Lowell P. Weicker, Jr., United States Senator from Connecticut;

The Honorable Paul Simon, United States Senator from Illinois;

The Honorable Christopher Shays, United States Representative from Connecticut;

John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health Administration, United States Department of Labor, Washington, D.C.;

Dr. John Lyons, Director, National Engineering Laboratory, National Bureau of Standards, Gaithersburg; MD;

Robert A. Georgine, President, Building and Construction Trades Department, AFL-CIO, Washington, D.C.;

Juel Drake, General President, International Association of Bridge, Structural, and Ornamental Iron Workers; Washington, D.C.;

Joseph F. Egan, Jr., Business Agent, Local Union 424, International Association of Bridge, Structural and Ornamental Iron Workers, New Haven, Connecticut;

Mary Beth Adonna, Oakville, CT;

Nancy Daddona, Prospect, CT.

A public hearing was conducted by the Committee on Labor and Human Resources in Washington, D.C., on November 16, 1989, to review the state of occupational safety and health in the construction industry, including a review of S. 930, a bill to amend the OSH Act, to establish an office of construction safety, health and education within OSHA, to improve inspections, investigations, reporting, and recordkeeping in the construction industry, to require certain construction contractors to establish construction safey and health programs and onsite plans and appoint construction specialists and for other purposes. The following individuals presented testimony:

The Honorable Christopher Shays, United States Representative from Connecticut;

Gerard F. Scannell, Assistant Secretary for Occupational Safety and Health, United States Department of Labor, Washington, D.C.;

Robert A. Georgine, President, Building and Construction Trades Department, AFL-CIO, Washington, D.C.;

Jim E. Lapping, Director of Safety and Health, Building and Construction Trades Department, AFL-CIO, Washington, D.C.;

Jake West, General President, International Association of Bridge, Structural, and Ornamental Ironworkers, Washington, D.C.;

Ken Paradis, Vice President for Labor Relations and Safety, National Constructions Association, Washington, D.C.

Kirk Fordice, Senior Vice President, Associated General Contractors, Washington, D.C.;

Ed Travis, Associated Specialty Contractors, Inc., Washington, D.C.;

John A. Focht, Jr., President, American Society of Civil Engineers, Washington, D.C.;

Thomas J. Hickey, American Consulting Engineers Council;

Neil Norman, President-Elect, National Society of Professional Engineers, Alexandra, VA;

Daniel Paine, President, Sinco Products, Inc. East Hampton, CT;

Barry A. Cole, Manager, construction safety consulting firm;

Matthew J. Burkart, President, Aegis Corporation, Southhampton, Pa;

Associated Builders and Contractors, Washington, D.C.;

Sheet Metal and Air Conditioning Contractor's National Association, Washington, D.C.

V. Committee Views

S. 930 is a comprehensive bill intended to reverse the horrendous record of fatalities, serious injuries and serious illnesses in the construction industry. The Contract Work Hours and Safety Standards Act of 1969, and the Occupational Safety and Health Act of 1970, have failed to realize this objective over a period of 20 years. S. 930 should, at long last, provide relief by addressing the special characteristics of the construction industry and establishing mechanisms to deal appropriately with those characteristics.

The bill is not premised on dereliction by the Occupational Safety and Health Administration. Rather, it is based on what the Committee believes is inadequate legislation presently on the books, and insufficient information available to OSHA to enable it to conduct an efficient and effective enforcement program in this unique industry.

This bill will not affect the applicability of any provisions of the OSH Act to the construction industry. Those provisions, and all of the Secretary's regulations thereunder, as well as the Secretary's safety and health standards which apply to the construction industry, will continue to apply. This includes Section 17 of the OSH Act, the penalty section. Violations by employers, project constructors, and project safety coordinators of the requirements contained in this bill will be subject to the enforcement procedures of Sec-

tions 9, 10, 11 and 12 of the OSH Act and the penalty provision of Section 17. Whereas S. 930 as introduced would have expanded the penalty structure applicable to the construction industry by increasing certain penalties and creating new ones, those provisions were deleted from the amendment and it is the intent of the Committee to subject violations of requirements in the bill to the penalties presently in the OSH Act and as they may be amended in the future.

S. 930 will also not affect the applicability to the construction industry and construction workers of the Superfund Amendments and Reauthorization Act (SARA) and OSHA's regulations thereunder, 29 C.F.R. § 1910.120.

A fundamental issue considered by the Committee was whether legislation was necessary or whether the Congress should wait until it can assess the results of administrative initiatives on the part of the present officials within OSHA. The Secretary of Labor and the Assistant Secretary have urged the Committee to wait, claiming that newly instituted initiatives, as well as initiatives being planned for the future will make legislation unnecessary. See letter from Secretary of Labor Elizabeth Dole to Members of Senate Labor and Human Resources Committee, July 31, 1990, including list of "OSHA Initiatives to Improve Safety and Health in the Construction Industry"; Testimony of Gerard F. Scannell, Assistant Secretary for Occupational Safety and Health before the Senate Labor and Human Resources, 8–24 (November 16, 1989).

The Committee carefully considered this issue. The Committee does not intend to minimize steps that OSHA has taken; indeed, those efforts are laudable. However, the Committee decided that legislation is necessary and should not be postponed any longer. In arriving at this conclusion, the Committee took into consideration the tremendous degree, and the ingrown nature, of the problem of safety in the construction industry, the failures of administrative initiatives in the past, and the advantages of legislation compared to administrative action.

As previously noted, according to government figures, each year an average of 2,500 deaths and 250,000 serious injuries occur in construction workplaces in this country. And, according to the National Institute of Occupational Safety and Health (NIOSH), construction fatalities and injuries are under-reported by approximately 60%.

As regards OSHA's recent initiatives, some of those initiatives and the task forces established to consider others are similar to task forces established, and initiatives taken, by previous Administrations, with no ostensible results.

Moreover, the list of OSHA initiatives which were described for the Committee by the Secretary and Assistant Secretary do not cover some of the most important aspects of S. 930, including (1) the requirement that a person be designated by the construction owner to have overall responsibility for safety and health on a construction site; (2) the requirement that there be an overall safety and health plan for a construction project; (3) the requirement that construction employers establish safety and health programs which, among other things, require the presence of a "competent person" on the job site with the authority, in imminent danger sit-

uations, to stop work or remove employees from the affected area, if necessary; (4) the requirement that an internal permit system be established for especially hazardous construction operations such as trenching and demolition; (5) the establishment of the position of a Deputy Assistant Secretary for Construction to coordinate the activities of the new Office with the various activities of OSHA directorates and offices affecting the construction industry; and (6) providing the Advisory Committee with certain authorities to increase its value to OSHA. Indeed, the Secretary and Assistant Secretary have stated their opposition to some of these items which the Committee regards as necessary to alleviate the problem at hand. Thus, even if OSHA were to make all the changes it says it is "reviewing", "evaluating" and "considering", the Agency would still be omitting many of the important changes that will be made by S. 930.

In addition, even if OSHA were to act on all the problems that were addressed by the bill, legislation is a better means of dealing with these problems than is administrative action. Making the necessary changes by legislation would make it more likely that they would be permanent, as they would be protected from reversals prompted by budgetary fluctuations, changes in administrative personnel, or changes in Administration. In addition, changes made by administrative action are subject to a variety of legal challenges (e.g., that the Agency overstepped its authority, the Agency did not follow proper rulemaking procedure) that would not arise if the changes were made by legislation.

This is not to say, however, that the Committee is unsympathetic to OSHA's assertion that it must retain discretion and flexibility in implementing its administrative duties. S. 930 recognizes this fact and seeks to establish only basic requirements, mechanisms and structures. Beyond that, the bill leaves it to the Secretary to "flesh out" these basics, taking into consideration the different sizes and types of employers, projects and operations, and the safety records of owners and employers in the construction industry.

Another important issue that the Committee considered was whether the legislation should seek to resolve the matter at issue in a more fundamental manner, namely, by establishing a new Construction Industry Safety and Health Administration similar to the Mine Safety and Health Administration (MSHA) established by Congress in 1977, 30 U.S.C. 801 et seq. For several years, the Building Trades unions have been seeking such an Agency. They have pointed out, with considerable persuasiveness, that the same considerations that led Congress to establish MSHA apply to the construction industry, that the construction industry employs many more workers than does the mining industry, and is considerably more complex and varied in its operations and in the factors which create risks of death and injury. Too, they have argued that there are ten times as many fatalities in construction than in mining and that the severity of injuries in the construction industry is, for the most part, higher than in mining.

Notwithstanding the force of the Building Trades unions' arguments, the Committee believes that a reasonable opportunity should be provided to see how the new requirements of S. 930 work within the framework of the present OSHA. S. 930 requires annual

reports to be made to Congress regarding safety and health conditions in the construction industry, as well as a report to be submitted three years after the effective date of this Act which specifically addresses the issue whether the present framework should be continued or whether a new Construction Industry Safety and Health Administration should be created.

In addition, S. 930 establishes a Deputy Assistant Secretary for Construction and provides line authority for that position over the new Office of Construction Safety, Health and Education and all other OSHA directorates and offices to the extent such directorates and offices deal with construction activities. There are presently OSHA directorates and offices which deal on a regular basis with construction safety and health, e.g., the Directorate of Safety Standards Programs, the Directorate of Health Standards Programs, the Directorate of Compliance Programs, the Office of Field Programs. The Office of Construction Safety, Health and Education will be headed by a Director who would also be subject to the line authority of the Deputy Assistant Secretary for Construction. In this way, the new Deputy Assistant Secretary will be able to coordinate all OSHA activities relating to the construction industry.

This would not be the first time that the position of a Deputy Assistant Secretary has been established by Congress. Public Law 94-502, passed on October 15, 1976, established within the Department of Labor a Deputy Assistant Secretary of Labor for Veterans' Employment. Public Law 90-168, passed on December 1, 1967, established the position of Deputy Assistant Secretary of Defense for Manpower and Reserve Affairs within the office, and subject to the supervision and control, of the Assistant Secretary of Defense for Manpower and Reserve Affairs. The Deputy Assistant Secretary was made responsible for all matters relating to reserve affairs. Public Law 91-477, passed on October 21, 1970, established within the Department of Commerce the position of Deputy Assistant Secretary of Commerce for Tourism. The law provided that the Deputy Assistant Secretary would be under the supervision of the Assistant Secretary of Commerce for Tourism, and would be appointed by the Secretary of Commerce. *See also* 20 U.S.C. § 1402 (Deputy Assistant Secretary to Head Office of Special Education Programs in Department of Education); 42 U.S.C. § 3505a (Deputy Assistant Secretary to Head Office of Population Affairs in Department of Health and Human Services).

The Act contains a definition of construction work which, with one exception to be discussed shortly, is identical to the definition established by OSHA in its regulations, 29 C.F.R. § 1910.12, and to the definition in the Contract Work Hours and Safety Standards Act of 1969, 40 U.S.C. § 333(a). Under this definition, all types of construction and construction-related operations are covered regardless of the size of the contractor or the number of workers he employs. The Committee considers it extremely important that this Act apply broadly, just as the OSH Act presently applies to construction employers of all sizes. The construction industry is, by and large, an industry of small employers. BLS figures show that the average number of workers employed by a construction firm is 7.6. Only 2% of cosntruction firms employ more than 50 workers. And, 66% of construction workers are employed by firms having

less than 50 employees. See letter from Edward J. Gorman, III, Associate General Counsel, United Brotherhood of Carpenters and Joiners of America to Ms. Rebecca Neudecker, Legislative Assistant to Senator Jeff Bingaman, August 27, 1990.

As previously noted, OSHA statistics reveal that 45% of all fatalities, and 42% of all serious violations of the OSH Act are committed by employers having 25 or fewer employees. And, 24% of all employee complaints are against such firms.

The inadvisability of excluding small construction contractors from this Act was emphasized at the Committee hearing on November 16, 1989. Neil A. Norman, and John A. Focht, Jr., representing professional design organizations, so testified. Committee Hearings 103. And, Barry A. Cole, manager of a construction safety consulting firm, speaking from the perspective of the small contractor, testified:

> * * * I don't want to diminish the significant impact and the learning opportunity of things like L'Ambiance Plaza and the Willow Island collapse, and the grandiose coverage that they get. But we think there are between 2,500 and 3,000 other deaths a year, one at a time, two at a time, and this bill can, in fact, impact 50, 60, 70 percent of those men and women who are dying, and as a corollary and as an adjunct to that, will impact on the L'Ambiance Plazas and the Willow Islands. But we need to look down to the man and the small contractors who are having these accidents. (Committee hearings, p. 105.)

Having said that the small contractor must be covered by this bill does not necessarily mean that identical requirements should be imposed on all construction employers for all construction projects and operations. There may be relevant differences based upon employer size, type of work, and safety and compliance records by construction owners and employers. Within the framework of the requirements of the bill, the Secretary is authorized and directed to promulgate regulations to implement those requirements. In so doing, the Secretary should take into consideration the above-mentioned factors, as well as others which the Secretary believes are relevant.

In one respect the Committee intends that the bill's provisions dealing with construction safety and health plans and programs, project constructors and project safety coordinators, should not apply. That is with respect to work done on a homeowner's residence pursuant to a contract between the homeowner and a construction employer. Accordingly, the definition of "construction work" provides that it does not include such work. The Committee believes that it is not necessary nor feasible for those requirements in Section 4 of the bill to apply to operations such as painting or decorating, or other types of renovation work, when performed on a homeowner's residence or the residence of his tenant. However, the Committee does not intend this exception to include construction operations for which a permit is required by Section 4 because of the special risk of death, serious injury or illness, e.g., construction of trenches, the erection and dismantling of scaffolding, demolition, the operation of cranes and derricks. Nor is it the Commit-

tee's intent to provide an exception for the construction by developers of multiple residences, including single family homes, or for work involving apartment complexes or other large-scale jobs. Those types of construction projects should be subject to the requirements of Section 4, notwithstanding the fact that residential construction is involved.

While it is the intent of S. 390 to have the requirements set out in this Act implemented by regulations promulgated by the Secretary, the Committee deems it essential that the regulatory process be commenced and completed with dispatch. Therefore, S. 390 requires the Secretary to issue interim regulations within 60 days after the effective date of the Act, and to issue final regulations within 180 days after the effective date of the Act. The final regulations should be issued following, and on the basis of, public comment and the opportunity for a rulemaking hearing. This procedure is similar to that adopted by the Congress in the SARA legislation and implemented in the regulations thereunder, 29 C.F.R. § 1910.120.

Although recordkeeping and paperwork requirements should never be imposed for their own sake, the Committee believes it is essential to provide OSHA with the information necessary to target its inspection resources in an efficient manner. This means that OSHA should know when and where projects exist, the nature of those projects, and the identity of the construction owners and employers associated with them. Clearly, OSHA has not heretofore had the benefit of such a targeting system. Information is also needed to get a better handle on the numbers of fatalities and injuries occurring in constuction and a breakdown of those statistics by employer type, project type, operation type, etc. At the Committee hearing, constuction safety consultant Barry Cole put it well:

> * * * We don't know how many people get killed in construction, much less injured, ill or otherwise. * * * In addition, OSHA doesn't know where most [the projects] are. The Dodge Reports? The Dodge Reports are a commercial entity that people subscribe to. They put their jobs in because they want people to bid on them, and they put their names in there so that other people can have knowledge of the job. If you don't want your name in the Dodge Report, it doesn't go in, which means OSHA can't find you—for the most part; there are some exceptions.
>
> As a management science, you must address your available resources. We are not asking for tremendously extra-large amounts of new resources; let's just focus what we have.
>
> We must have accurate and meaningful statistics. The part of the bill no one has talked about, which is the registration of jobs—maybe a simple, three-by-five card or a single page that is sent off to Bureau of Labor Statistics in OSHA's name that says here is a job, maybe run a summary of the jobs on a monthly basis, and let OSHA target from that. That is a beginning. At least you have a global pool of who is really out there.

> Also we are going to get statistics. At the end of those jobs, the bill asks for them to send in a report. It should be a simple, reasonably, meaningful report—basic. From that, we'll find out do large contractors have accidents, do small contractors, do specialties, do generals. And OSHA will be able to target, as your bill tells them to do, effectively.
>
> Documentation. People complain about it, I complain about it; I don't like it. The point is documentation is a management tool, and the benefits of this tool are increased awareness by the individual who is told to do it—awareness—awareness of his responsibility as a supervisor to do a certain amount of safety work. It also gives him some accountability. If you sign a piece of paper, you'll be pretty sure that what is on there is meaningful, and you are going to follow through. If you say you are going to tell your employees to wear their hard hats and enforce it, and then you don't do it, well, you've basicially incriminated yourself. We are asking construction supervisors with some limited training—and we'll call them now "construction safety specialists" or certified safety specialists" or whatever we'll call them—we are asking them to plan safety into the job. (Committee hearing 106-107.)

The reporting requirement in the bill requires the definition of the term "serious injury". S. 930 uses the same definition as that used in the Resource Recovery and Conservation Act, 42 U.S.C. § 6928 and the Clean Water Act, 33 U.S.C. § 1913, with one exception. The exception is that for clarification purposes, "illness' is explicitly included, and is a reportable condition, provided it is accompanied by the specific symptoms set forth in the definition and in those other statutes used here as a model.

With respect to pre-job reporting, S. 390, in an effort to minimize paperwork requirements, does not require every construction employer to submit a report. Rather, the project constructor shall submit a report for the project as a whole.

S. 930 as introduced would have required the project constructor to retain, or direct a contractor to retain, the services of a licensed architect or engineer if the project safety coordinator determined that such assistance was required for compliance with the contractor's safety and health program or the project plan, or that a particular aspect of the work involved significant safety hazards, or was extremely technical. That independent requirement has been deleted by the amendment. It is anticipated, however, that as part of his general duties, the project safety coordinator on behalf of the project constructor, will, in appropriate situations, call upon the services of such design professionals. As Neil A. Norman, President-elect of the National Society of Professional Engineer testified at the Committee hearing:

> There are licensed professional engineers who are licensed in the safety disciple. In my State of California, we have a safety engineer discipline. There are also professional engineers in other states that are licensed in either the general professional engineering category or one of the

disciplines who are safety specialists in some parts of the construction safety process. (Committee hearing 97.)

In his prepared statement, Mr. Norman observed that "Certain critical construction operations should be observed by professional engineers who may or may not be the design engineer, and this work should be specifically identified as an additional service within the contract." Id. 99. The Committee notes this evidence in the record to emphasize that the deletion of the requirement for obtaining the services of a designed professional from S. 930 as introduced is not intended to imply that professional engineers and architects can not play an important role in improving safety and health in the construction industry. They certainly can.

The Advisory Committee on Construction Safety and Health, which was established by the Federal Construction Safety Act of 1969, is a tripartite committee consisting of 5 employer representatives, 5 employee representatives, and 5 "public" representatives (two from state safety and health programs, one from NIOSH, and two from the general public having construction safety expertise). These are all individuals who have proven their concern for the safety and health of American construction workers. Divided votes of this group have been rare. Votes on nearly all critical issues have been unanimous. Yet, the Committee is aware of longstanding and continuing complaints from the Advisory Committee regarding OSHA's relationship with it. A hearing was held in June 1988 on this subject by the Health and Safety Subcommittee of the House Committee on Education and Labor. One Employer member testified that "Too often the advice we present does not even receive the courtesy of a response from OSHA." Testimony of James Parkenham before the Subcommittee on Health and Safety, Committee on Education and Labor, House of Representatives (June 15, 1988). The gentleman testified that "a revised charter with additional resources and a larger responsibility would make the OSHA Administration more responsive." *id.* at 6. A long-time Labor member of the Committee, George Smith, testified in somewhat more detail. He stated that it is "quite frustrating when these fifteen individuals with years of experience in the construction safety and health field find their unanimous recommendation reversed with no explanation as to the reason for such reversal." He further stated that the practice of ignoring recommendations has pertained not only to standards' content but other areas as well, such as OSHA program directives. In addition, the gentleman noted that "the Advisory Committee has had lengthy periods where OSHA has kept them from meeting," and OSHA has ignored Committee requests for the placement of designated subjects on meeting agendas. Testimony of George Smith before the Subcommittee on Health and Safety of the Committee on Education and Labor, House of Representatives (June 15, 1988). It is somewhat ironic to note that among the matters as to which OSHA has rejected Advisory Committee recommendations are the Committee's recommendations in 1988, and again in 1990, that Congress enact legislation to improve workplace safety and health in the construction industry.

For the foregoing reasons, this Committee believes it is essential to provide certain specific authorities to the Advisory Committee so that it can operate effectively and fulfill its statuory mission. Accordingly, Section 8 of the bill authorizes the Advisory Committee to schedule meetings and set meeting agendas, establish subcommittees, conduct research and issue reports, retain experts and consultants, employ secretarial and clerical personnel, and purchase office equipment and research material as may be necessary to carry out its functions.

Congress previously, in appropriate circumstances, has specifically authorized advisory committees to call their own meetings and establish their own meeting agendas, procure support services and retain experts and other personnel. *See* 29 U.S.C. § 1302(h) (Advisory Committee to Pension Benefit Guaranteee Corporation); § 12 U.S.C. § 3606(f) (Solar Energy and Energy Conservation Advisory Committee); 16 U.S.C. § 410nn-3 (San Francisco Maritime National Park Advisory Commission); 16 U.S.C. § 410pp-4 (Zuni-Cibola Advisory Committee); 20 U.S.C. § 1098 (Advisory Committee on Student Financial Assistance); 7 U.S.C. § 1508 note (Crop Insurance Commission); 7 U.S.C. § 5005(c) (National Commission on Agricultural and Rural Development Policy).

The Committee expects that these additional authorities will enable the Advisory Committee to fulfill the duties imposed upon it in 1969.

VI. Votes in Committee

Votes taken during Committee consideration of the legislation were as follows:

1. The Committee accepted by voice vote an amendment in the nature of a substitute offered by Senator Dodd.

2. The Committee voted to adopt and report S. 930 as amended, and an amendment in the nature of a complete substitute, by rollcall vote, 9-7.

YEAS	NAYS
Mr. Kennedy	Mr. Hatch
Mr. Pell	Mrs. Kassebaum
Mr. Metzenbaum	Mr. Jeffords
Mr. Dodd	Mr. Coats
Mr. Simon	Mr. Thurmond
Mr. Harkin	Mr. Durenberger
Mr. Adams	Mr. Cochran
Ms. Mikulski	
Mr. Bingaman	

VII. Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the following statement of the regulatory impact of S. 930 is made:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 26, 1990.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 930, the Construction Safety, Health, and Education Improvement Act of 1990, as ordered reported by the Senate Committee on Labor and Human Resources on September 26, 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Attachment.

VIII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 930.

2. Bill title: Construction Safety, Health, and Education Improvement Act of 1990.

3. Bill status: As ordered reported by the Senate Committee on Labor and Human Resources on September 26, 1990.

4. Bill purpose: To amend the Occupational Safety and Health Act of 1970 to establish an Office of Construction Safety, Health, and Education, to improve inspections, investigations, reporting, and recordkeeping on construction sites, to require construction employers to establish construction safety and health plans and programs, and for other purposes.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1991	1992	1993	1994	1995
Estimated Authorization Levels					
Office of Construction Safety, Health, and Education		(1)	(1)	(1)	(1)
Regulations		1	1	1	
Inspection priority system		1	1	1	1
Inspectors		30	31	32	33
Construction Safety and Health Academy		3	3	3	3
State grants		13	13	14	
Advisory committee		(1)	(1)	(1)	(1)
Reports		(1)	(1)	(1)	(1)
Total Estimated Authorization Levels		49	51	54	40
Total Estimated Outlays		42	51	53	42

[1] Less than $500,000.

Details in this table may not add to totals because of rounding.

The costs of this bill fall within budget function 550.

Basis of Estimate: Authorization levels were not stated in the bill and thus were estimated by CBO. This estimate assumes an effective date on October 1, 1991, as stated in the bill. In addition, this estimate assumes that all authorizations are fully appropriated at

the beginning of each fiscal year. Outlays are estimated using spendout rates computed by CBO on the basis of recent program data.

S. 930 would authorize the appointment of a Deputy Assistant Secretary of Labor for Construction to head the Office of Construction Safety, Health and Education within the Occupational Safety and Health Administration (OSHA). In addition, a new small business liaison position would be established in the office to provide assistance to small businesses to comply with construction standards. Based on information provided by OSHA, CBO estimates that salary and benefits for the Deputy Assistant Secretary of Labor of Construction, the small business liaison, clerical staff, as well additional overhead expenses would cost about $400,000 each fiscal year.

The bill would authorize the Secretary of Labor to form and implement several regulations pertaining to construction safety and health. Based on information provided by OSHA, CBO estimates that it would cost about $1 million annually in fiscal years 1992 to 1994 to establish and implement all the regulations.

S. 930 would require contractors to submit all pertinent information about their construction project to the Secretary of Labor before the commencement of construction so that the Secretary can develop and implement a prioritized system of inspections. Additional staff would be needed to examine such reports. The number of additional personnel needed is very uncertain because the number of contractors who would actually report and the amount of information required in each report is unknown. Assuming that 20 additional staff members were required, this provision would cost approximately $1 million in each of fiscal years 1992 to 1995.

S. 930 would authorize the Secretary of Labor to employ additional inspectors to enforce the new regulations, and to inspect construction worksites within 48 hours of any incident resulting in a fatality, or a serious injury. OSHA already inspects all fatalities. According to OSHA, approximately 10,000 accidents per year occur at construction sites resulting in serious injuries. In addition, 2 or 3 inspectors are generally needed to investigate each accident site for an average of one week. Based on this information, CBO estimates that 500 additional inspectors would be needed each year, costing $30 million in fiscal year 1992, increasing to $34 million by fiscal year 1995 due to projected pay inflation.

The bill would authorize the establishment of a Construction Safety and Health Academy in OSHA to train OSHA inspectors, as well as construction employers and employees. OSHA currently runs its own training center in Illinois that offers inspectors instruction in construction safety and health. The training center employs 20 instructors. In order to provide more in-depth construction courses, about 4 additional instructors would be needed. In addition, in order to give construction employers and employees access to training, CBO estimates that 25 new instructors either at the training center or contracted from other educational centers would be needed each year, assuming that 50,000 private sector trainees would participate in the program. In total, CBO estimates that about $3 million would be needed each fiscal year to employ

more trainers. Actual costs could be higher or lower depending on the actual participation rate.

S. 930 would provide grants to those states that have state plans covering construction safety and health to administer and enforce those provisions. OSHA currently provides grants to these "state plan" states for construction activities equalling 50 percent of state costs, or about $32 million. S. 930 would authorize the Secretary of Labor to contribute up to 90 percent of the "state plan" states construction safety and health costs for the first three years of this program, and then to revert back to providing 50 percent. Therefore, CBO estimates that this provision could cost about $13 million in fiscal years 1992 to 1994, assuming that the Secretary provides 90 percent of the state costs and that state costs would remain relatively constant.

S. 930 would provide the current Advisory Committee on Construction Safety and Health additional authority to employ secretarial personnel, retain experts and consultants, and to conduct research and issue reports. CBO estimates that this provision would cost less than $500,000 in each fiscal year.

The bill would authorize the Secretary of Labor to report annually on the activities of the Office of Construction Safety, Health and Education and to report after three years of operation on whether the office should be transformed into the Construction Industry Safety and Health Administration. CBO estimates that each of the reports would cost less than $500,000.

6. Estimated cost to State and local government: States that have their own construction safety and health programs could actually save about $13 million in fiscal years 1992 to 1994, if the federal government increases its share of state costs and if state program expenses remain relatively constant.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Karen Graham.

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

A. ESTIMATED NUMBER OF INDIVIDUALS AND BUSINESSES REGULATED AND THEIR GROUPS OR CLASSIFICATIONS

The bill would primarily affect the approximately 545,700 establishments that engage in construction work, and the approximately 4 million employees that peform such work.

B. ECONOMIC IMPACT ON THE INDIVIDUALS, CONSUMERS AND BUSINESSES AFFECTED

In the short term, the bill might result in some increases in costs to construction contractors and employers. Section 4 of the bill provides that the Secretary of Labor shall promulgate regulations requiring "project constructors" (who are likely to be construction managers, top-tier contractors, or firms engaged in the business of providing project constructor services) to designate "competent persons." The Committee expects that in some instances, this would cause construction contractors and employers to hire additional personnel.

Section 4 also directs the Secretary to promulgate regulations requiring project constructors and construction employers to establish, respectively, safety and health plans and programs that meet specified requirements. The Committee anticipates that contractors and employers would need to expend significant work hours and resources in complying with these regulations, and that, in some instances, this would appreciably increase their costs of doing business in the short term.

However, with respect to the requirements imposed on construction employers, the Committee notes that the Secretary's regulations under the OSH Act already require every construction employer to establish and maintain a safety and health program. Construction employers have long taken advantage of the minimal enforcement of these regulations. Construction employers should not be allowed to complain now that these requirements have been mandated by statute, and they are made to comply with laws that they have long ignored.

In addition, the Committee notes that a number of factors would likely mitigate even the short term costs imposed by the bill. For example, many large construction contractors and employers already have personnel on their payroll who are qualified to serve as project safety coordinators or competent persons, and would therefore not need to hire additional individuals as a result of S. 930. Similarly, some large construction employers and contractors already expend considerable work hours and resources on safety and health training, planning and other activities required by S. 930, and so their costs would not be significantly increased by passage of the bill.

As for smaller contractors and employers, S. 930 specifically provides that the Secretary of Labor shall take account of the size of firms in promulgating regulations, and the Committee consequently anticipates that such contractors and employers would be subject to less costly requirements. Moreover, the bill excludes almost entirely from coverage construction work performed for homeowners on their own residences, and thus would not increase costs on those projects at all. For these reasons, the Committee does not anticipate that any significant increases in costs will be passed along to the "customers" of construction contractors and employers, even in the short term.

Meanwhile, in the long term, the Committee is convinced that S. 930 will significantly improve safety and health on construction worksites. This will result in significant economic and social benefits to construction employers and employees, and will actually *reduce* the costs of doing business for construction owners, contractors and employers by reducing lost work time, insurance costs, and a host of other expenses generated by unsafe and unhealthy construction worksites.

C. IMPACT OF THE ACT ON PERSONAL PRIVACY

The bill would not have any significant impact on the personal privacy of individuals affected.

D. ADDITIONAL PAPERWORK

The bill would impose significant additional paperwork requirements on project constructors. Section 4 of the bill requires project constructors to establish written safety and health plans. Section 4 of the bill also requires project safety coordinators, on behalf of project constructors, to maintain detailed safety records.

Section 5 of the bill requires project constructors to submit to the Secretary of Labor annual or job completion reports and, pursuant to regulations to be promulgated by the Secretary, reports prior to the commencement of construction. (Section 5 also requires project constructors to promptly report fatalities, serious injuries, or structural failures, but these reports may consist only of a telegram or telephone call). Section 5 also requires the project constructor to maintain accurate records concerning fatalities, serious injuries, and incidents at a worksite.

With regard to construction employers, the Committee interprets Section 4 as requiring safety and health programs to be in writing. Moreover, the Committee contemplates that, in ensuring compliance by construction employers with training requirements under section 4(h), the Secretary shall require employers to keep written records of the training provided to employees.

In the Committee's view, the paperwork requirements imposed by the S. 930 are not excessive. First, most of the requirements, as noted above, are imposed on the project constructor. Thus, on all construction projects, the bulk of the paperwork will be taken care of by a single entity. Second, many of the paperwork requirements are to be imposed through regulation by the Secretary of Labor, and the Secretary is explicitly directed to take account of firm size and other factors in setting the requirements. The Committee anticipates that the Secretary will mitigate the paperwork burden on smaller construction contractors and employers.

Finally, and most importantly, the Committee views these paperwork requirements as instrumental to the achievement of the objectives of the bill. Section 4's requirement of written safety and health plans and programs is at the very heart of the bill's approach of making construction contractors and employers themselves take the steps necesssary to improve safety and health in the construction worksite. And Section 5's reporting and recordkeeping requirements are indispensable to the development and operation of the prioritized system of inspections that will direct enforcement resources where they are most needed.

IX. Section-by-Section Analysis

SECTION 1—SHORT TITLE

Section 1 establishes the short title of the Act as the "Construction Safety, Health, and Education Improvement Act of 1990."

SECTION 2—DEFINITIONS

Section 2 contains definitions of the specific terms used in the Act, including the following:

Section 2(17) defines "qualified person" as an individual who, by possession of a recognized degree, certificate, or professional stand-

ing and by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems relating to worker safety and health involving construction work.

Section 2(18)(A) defines "competent person" as an individual who, by knowledge, training, and experience, is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous or dangerous to construction employees of the construction employer who appointed the competent person, and who has authorization from that construction employer to take prompt corrective measures.

Section 2(18)(B) defines "construction employer" as an employer (including a self-employed person) engaged primarily in the building and construction industry or who performs construction work under a contract with the construction owner.

Section 2(18)(D) defines "construction owner" as a person who owns, leases, or has effective control of property, with or without improvements, a structure, or other improvement on real property on which construction work is being, or will be, performed.

Section 2(18)(E)(i) defines "construction work" as work for construction, alteration, demolition, or repair, or any combination thereof, including painting and decorating. The section expressly includes within the definition such work performed under a contract between a construction employer and an agency of the United States or any State or political subdivision of a State.

Section 2(18)(E)(ii) excludes from the definition of "construction work" work performed under a contract between a construction employer and a homeowner for work on the homeowner's own residence. The Committee considers this exclusion as applying to individual or family residences, such as single-family homes or individual apartment units. The Committee does not intend this section to exempt owners of apartment buildings or developers of multiple single/family residences from the requirements of the Act. Moreover, Section 2(18)(E)(ii) provides that work on a homeowner's own residence shall be included in the definition of "construction work" where such work involves certain "covered operations," set out in Section 4(f) of the Act, that are determined to pose a risk of death or serious injury. The Committee notes that, in those situations, the only obligation on the homeowner is to designate a "project construction," who will be the one responsible for meeting all the requirements of the Act.

Section 2(18)(G) defines "incident" as an event occurring at a construction worksite that involves a structural failure, a fire or explosion, or any other class of incident as determined in regulations promulgated by the Secretary of Labor that could have caused death or serious injury had an individual been in proximity.

Section 2(18)(H) defines "project constructor" as a person (including a construction manager, prime contractor, general contractor, or construction employer) who assumes the responsibilities of a project constructor by contract or a construction owner who expressly assumes by contract the responsibilities of a project constructor.

Section 2(18)(I) defines "project safety coordinator" as an individual designated by a project constructor (or, if there is no project constructor, designated by the construction owner) to perform the

duties of a "project safety coordinator" as prescribed in the Act, and who is certified by the Construction Safety and Health Academy or by an organization approved by the Academy as having fulfilled the requirements of a standardized training course and testing program developed or approved by the Secretary of Labor, with the advice of the Advisory Committee on Construction Safety and Health.

Section 2(18)(J) defines "serious injury" as bodily injury or illness that involves (1) a substantial risk of death; (2) protracted unconsciousness; (3) extreme physical pain; (4) protracted and obvious disfigurement; or (5) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

SECTION 3—OFFICE OF CONSTRUCTION SAFETY, HEALTH, AND EDUCATION

Section 3(a) establishes within the Occupational Safety and Health Administration an Office of Construction Safety, Health and Education. The function of the Office is to ensure safety and healthful working conditions in the performance of construction work.

Section 3(b) prescribes a number of duties of the Secretary of Labor under the Act. The Secretary's duties include (1) developing mandatory standards for construction safety and health plans and programs established under the Act; (2) assuming control of a construction site to prevent the destruction of any evidence that would assist in the investigation of a fatality, serious injury, or incident (unless it must be moved or destroyed as a part of rescue operations) and to monitor the rescue operations conducted in response to an incident; (3) assisting the Advisory Committee on Construction Safety and Health in the development of training courses and curriculum for the Construction Safety and Health Academy; (4) consulting with and advising construction employer associations, construction employers, construction employees, and labor organizations as to effective means of preventing serious injuries in construction work and ensuring that all of these parties have equal access to the consultative services; and (5) promulgating regulations requiring construction employers who have high frequency rates of fatalities or serious injuries or have demonstrated a pattern of noncompliance with health and safety standards, rules or regulations (by, for example, being cited a number of times for violations of the Occupational Safety and Health Act or of state safety and health laws) to establish, implement and comply with special health and safety programs to be approved by the Secretary of Labor.

Section 3(b)(7) mandates that the Secretary of Labor develop and implement such regulations as are necessary to ensure compliance with the Act and ensure that such regulations are appropriate to firms of different sizes, types of work, and past safety records and records of compliance with safety and health laws and regulations, and are adequate to provide for the safety and health of all employees employed by these different types of firms.

Section 3(c)(1)(A) establishes within the Occupational Safety and Health Administration the position of Deputy Assistant Secretary

of Labor for Construction, to be appointed by the Secretary of Labor.

Section 3(c)(1)(B) provides that the Deputy Assistant Secretary of Labor for Construction shall coordinate the activities of the Office of Construction Safety, Health and Education and the Advisory Committee on Construction Safety and Health with those activities of other offices and directorates within the Occupational Safety and Health Administration that relate to safety, health and education in the construction industry. In short, it is the Deputy Assistant Secretary's responsibility to ensure that all activities within the Occupational Safety and Health Administration that impact on construction safety and health operate and interrelate in a manner that most effectively promotes safety and heatlh for construction employees.

Section 3(c)(2)(A) requires the Secretary of Labor to hire such additional inspectors as are necessary to carry out the duties of the Secretary under sections 8 and 29 of the Occupational Safety and Health Act, which have been amended by the bill to require more inspections in the construction industry. The Committee intends that these inspectors will be in addition to, and will not replace, qualified inspectors presently working for the Occupational Safety and Health Administration.

Section 3(c)(2)(B) provides that the Secretary of Labor, with the advice of the Advisory Committee on Construction Safety and Health, shall determine the necessary qualifications and training requirements for these additional inspectors. The section prescribes that the qualifications and requirements shall, at a minimum, include a full understanding of the Act and the Secretary's standards and regulations applicable to the construction industry and at least 5 years of experience working in the construction industry. It is the intention of the Committee that all inspectors performing inspections of construction worksites meet the qualifications and training requirements prescribed by the Secretary under section 3(c)(2)(B).

Section 3(c)(3) provides that the Director of the Office of Construction Safety, Health and Education designate an employee of the Office to serve as a small business liaison. The liaison shall be responsible for assisting small businesses in complying with new and existing standards under the Act. The assistance can be made through contacts with trade associations, or through other contacts with small businesses.

SECTION 4—CONSTRUCTION SAFETY AND HEALTH PLANS AND PROGRAMS

Section 4(a) provides that for every construction project covered by the Act, a project constructor shall be designated in a contract with the construction owner, and that the project constructor shall have overall responsibility for the safety and health of all construction employees at the construction worksite, and shall perform the various duties of project constructors set out in the Act (and in the regulations issued under the Act). The purpose of this section is to ensure that on every construction project, a single entity (whom the Committee contemplates will be a construction manager, a top-tier contractor, or a firm that engages in the business of providing project constructor services for construction projects) is placed in

charge of, and will be accountable for, the safety and health of the construction employees working on the project. Section 4(a)(2) provides that a homeowner shall never be designated as project constructor on a project involving work on the homeowner's own residence, thus protecting homeowners from having the responsibilities of a project constructor imposed on them as a result of pressure by contractors or ignorance of this law.

Sections 4(b)–(i) required the Secretary of Labor to promulgate regulations providing for the establishment of construction safety and health plans and programs, and also requires that these regulations be appropriate to firms of different sizes, types of work and past safety records (including records of compliance with safety and health laws and regulations). The Committee intends that the Secretary, in promulgating regulations under this section, shall take into account these sorts of differences among firms. However, the Committee does not intend the Secretary to exempt any firm from any requirements prescribed in this section.

In directing the Secretary to promulgate regulations, the Act uses an approach similar to that taken with the worker protection standards of the Superfund Amendments of 1986 (see Public Law 99–499, §§ 126(a)–(f), 100 Stat. 1613, 1690–92 (codified at 29 U.S.C. § 655 note)). Section 4(b)(1) of the Act directs the Secretary of Labor to promulgate interim regulations on construction safety and health plans and programs within 60 days of the effective date of the Act, and Section 4(b)(2) directs the Secretary to promulgate final regulations within 180 days of the Act's effective date. Section 4(b)(1)(B) mandates that the interim regulations include, at a minimum, all of the specified requirements set forth in Section 4 of the Act, and Section 4(b)(2)(B) provides that the final regulations shall include, at a minimum, each of the requirements established by the interim regulations.

Section 4(b)(1)(B)(i) provides that the Secretary's interim and final regulations shall require project constructors to establish and implement written safety and health plans that shall include the project safety and health programs of the construction employers involved in the projects. The Committee does not intend that the plans shall be a mere compilation of the project safety and health programs, but intends that the plans shall provide for the monitoring and coordination of these safety and health programs.

Section 4(b)(1)(B)(ii)(I) provides that the Secretary's regulations shall require hazard analyses. Such hazard analyses should identify the potential for hazards that may exist during the construction process and provide instructions for the prevention of hazards throughout the construction process. The Committee intends that hazard analyses be prepared by, or on behalf of, project constructors, and that written descriptions of hazard analyses be included in project safety and health plans.

Section 4(b)(1)(B)(ii)(II) provides that the Secretary's regulations shall require construction process plans. The Committee contemplates that such construction process plans shall include descriptions of the construction process to be used (including specific references to critical points and conditions in the process that require special attention), descriptions of the means that will be used to ensure the structural stability of worksites (e.g. buildings, struc-

tures, excavations), descriptions of the inspections required on the worksites, and appropriate references to the hazard analyses discussed in the preceding paragraph. Again, the Committee intends that construction process plans be prepared by, or on behalf of, project constructors, and that written descriptions of construction process plans be included in project safety and health plans.

Section 4(c)(1) provides that the Secretary's regulations shall require project constructors to designate project safety coordinators for construction projects. Section 4(c)(2) makes it clear that project constructors cannot avert their responsibility for overall safety and health by delegating it to project safety coordinators. Section 4(c)(3) provides that all construction employers on a project are to be notified of the identity of project safety coordinators.

Section 4(d) provides that the Secretary's regulations shall require adequate monitoring of safety at construction sites by project safety coordinators (acting on behalf of project constructors). Under section 4(d)(2)(A), the monitoring includes notifying a construction employer if the project safety coordinator discover a hazardous condition at a construction worksite, or noncompliance by the construction employer with the project safety and health plan, the employer's own safety and health program, or any safety and health law, standard or regulation. If the construction employer fails to correct the hazardous condition or noncompliance, the project safety coordinator is then to notify the Secretary of Labor, the construction owner, and the project constructor.

Under section 4(d)(2)(B), the monitoring also includes administration by the project safety coordinator of the project safety and health plan, and maintenance by the project safety coordinator of a detailed safety report with respect to the construction worksite. The report is to include a record of the fatalities, injuries and incidents at the construction worksite, and information concerning hazardous conditions and unsafe practices at the worksite.

Section 4(e) provides that the Secretary's regulations shall require project safety coordinators, on behalf of project constructors, to prepare the project safety and health plans prior to commencement of construction. Section 4(e) also provides that project safety coordinators, on behalf of project constructors, are to ensure the compliance of construction employers with the Act's reporting requirements.

Section 4(f) provides that the Secretary's regulations shall require that project safety coordinators, on behalf of project constructors, develop permit systems to authorize employers to engage in operations determined to pose a risk of death or serious injury. This section provides that such operations, termed "covered operations," shall include trenching, scaffolding, demolition, operation of cranes and derricks, operations requiring employees to enter confined or enclosed spaces, operations involving exposure to one or more toxic substances (such as asbestos) and any other operations designated by the Secretary of Labor. Under this section, a construction employer has to obtain a permit from the project safety coordinator before the employer can engage in a covered operation. Section 4(f)(3) provides that, before issuing such a permit, a project safety coordinator must ensure that the employer is knowledgeable of and intends to comply with the requirements of the Act

and all standards and regulations issued by the Secretary, and that the employer has developed a safety and health program that adequately addresses the hazards presented by the covered operation in which the employer seeks to engage.

Section 4(g) provides that the Secretary's regulations shall require construction employers to develop and implement project safety programs. The Committee contemplates that such programs shall be in writing.[1] Section 4(g)(2) requires that such programs provide that construction employers appoint one competent person for each project to be responsible for the general administration of the program and that a competent person (not necessarily the one responsible for administration of the program) be at the worksite at all times that construction employers are engaged in construction work. Section 4(g)(2)(C) requires that programs give competent persons the responsibility, and authority, to conduct frequent inspections of worksites, and to take all actions necessary to eliminate hazards, including stopping work on a site or removing affected employees from the site, if necessary.

Under section 4(h), the Secretary's regulations are to require construction employers' programs to provide that all construction employees on a project receive, or have received within the immediately preceding 12-month period, general safety and health training in a manner prescribed by the Secretary. Section 4(h)(2) provides that the Secretary's regulations shall include a procedure under which the Secretary can ensure that the training requirements are complied with. The Committee anticipates that the procedure will include a requirement that construction employers maintain current records showing the amount and type of training received by construction employees.

Section 4(i) sets out a number of requirements that the Secretary's regulations are to mandate be included in construction employers' safety and health programs. Section 4(i)(1) requires that programs provide for adequate instruction of construction employees in the recognition of unsafe and unhealty conditions, the standards and regulations applicable to the work activities of the construction employees, use of construction worksite equipment (which includes, in the Committee's view, required personal protective equipment), the handling of toxic and harmful substances, and other matters that the Secretary may prescribe.

Section 4(i)(2) requires that programs include emergency evacuation plans, procedures for regular inspections and emergency and special inspections, the reporting of incidents, regular safety meetings, and procedures for monitoring safety and health.

Under Section 4(i)(3), every safety and health program is to include a procedure under which any employee or employee representative (such as a labor organization) may obtain an immediate inspection or a written evaluation, or both, of any condition that the employee or employee representative perceives as hazardous, or any substance that the employee or employee representative perceives as harmful, at any time in the construction process. The in-

[1] Such an interpretation is consistent with Section 4(b)(1)(B)(i), which requires that written safety and health plans include the project safety and health programs of the construction employers involved in the projects. Ths would not be possible if the programs were not written.

spection or evaluation is to be conducted by a qualified person. If it is determined that the hazardous condition or harmful substances presents an imminent danger to construction employees, the project constructor is required to stop work at, or remove affected construction employees from, the area in which the imminent danger exists.

SECTION 5—INSPECTIONS, REPORTING AND RECORDKEEPING

Section 5(h) requires the Secretary of Labor to establish an effective system of prioritized construction worksite inspections. Section 5(h)(2) provides that, in establishing priorities for construction worksite inspections, the Secretary is to give due weight to the records of compliance with this Act of construction employers and construction owners on the worksites and to the frequency and severity rates of fatalities, serious injuries, and incidents attributable to particular construction owners and construction employers and particular types of construction projects, worksites and operations. The Committee intends these provisions to require the Secretary to target for inspections the most hazardous construction projects and operations, and the construction employers and construction owners with the worst safety records.

Section 5(h)(3) directs the Secretary to promulgate regulations requiring project constructors to submit to the Secretary prior to the commencement of construction work on a construction project such information as is necessary for the Secretary to develop the system of prioritized inspections described in the preceding paragraph. In the Committee's view, such information should include, *inter alia*, a description of the project, the project address, the date construction work will commence and the anticipated duration of such work, and the expected number of construction employees to be employed on the project. In promulgating these regulations on prejob notice, the Secretary is to take into account differences in firms' sizes, types of work, and past safety records (including records of compliance with safety and health laws and regulations). However, the Committee does not intend the Secretary to exempt any project contructor entirely from the obligation to provide the Secretary information on a project prior to the commencement of construction work.

Section 5(h)(4) ensures that the inspection priority system shall not have the effect of limiting inspections conducted on the basis of complaints by construction employees or employee representatives or complaints of imminent dangers or inspections intended as a followup to prior enforcement actions or proceedings. And Section 5(h)(5) forbids the Secretary from excluding any construction owner or construction employer engaged in construction work from construction worksite inspections.

Section 5(i) requires project constructors to maintain accurate records of fatalities, serious injuries and incidents at a worksite, and prescribe the information to be contained in such records. Section 5(i)(3) provides that these records are to be available for any inspection conducted under the Act.

Section 5(j)(1) requires project constructors to report to the Secretary by telephone or telegraph within 4 hours any incident involv-

ing construction work that results in a serious injury, a fatality, or a structural failure. Section 5(j)(2) prescribes the information to be included in such reports.

Section 5(j)(3) requires the Secretary to conduct an inspection of the construction worksite, or the pertinent area of the site, to investigate all reports of such incidents as the Secretary, by regulation, prescribes. The Secretary is to conduct the inspection as soon as practicable, but no later than 24 hours, after receipt of the report of the incident, unless the Secretary determines that conditions at the site would make an inspection dangerous. Section 5(j)(4) requires project constructors to take appropriate measures (as defined in regulations to be issued by the Secretary) to prevent the destruction of any evidence that would assist the Secretary in the investigation of such an incident. Section 5(j)(5) requires that, as soon as practicable after the investigation, the Secretary prepare and make public a narrative description of the incident, which shall contain appropriate recommendations for the prevention of similar incidents in the future.

Section 5(k)(1) requires that project constructors, on the completion of a construction project or at intervals of 1-year (whichever occurs earlier), submit to the Secretary a report of all fatalities and serious injuries suffered by employees, and of all structural failures that occurred, on the project. Section 5(k)(1) provides that if there have been no fatalities or serious injuries or structural failures, the report shall so state. Section 5(k)(2) prescribes the information to be contained in the project completion (or annual) report.

SECTION 6—CONSTRUCTION SAFETY AND HEALTH ACADEMY

Section 6(a) establishes within the Occupational Safety and Health Administration a Construction Safety and Health Academy. Section 6(b) provides that the Academy is responsible for the training of construction worksite inspectors, construction employers and employees, and other persons as the Secretary of Labor, with the advice of the Advisory Committee on Construction Safety and Health, considers appropriate. It is not the intention of the Committee to require the Academy itself to directly train all of these persons. Rather, the Committee contemplates that, in addition to providing some direct training, the Academy shall meet its responsibilities by overseeing and guiding other organizations that provide safety and health training. To that end, Section 6(c) provides that the Academy may enter into cooperative educational and training agreements with educational institutions, State governments, labor organizations, and construction industry employers. Section 6(d) ensures that construction employees, construction employee representatives, and construction employees will have equal access to the training services made available under Section 6.

SECTION 7—NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

Section 7 makes a technical amendment to Section 22 of the Occupational Safety and Health Act (29 U.S.C. § 671) by striking "Department of Health, Education and Welfare" each place it appears

and replacing it with "Department of Health and Human Services".

SECTION 8—ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH

Section 8 gives the Advisory Committee on Construction Safety and Health the authority to schedule meetings and set meeting agendas, establish subcommittees, conduct research and issue reports, retain experts and consultants, employ secretarial and clerical personnel, and purchase office equipment and research materials as may be necessary to carry out its functions.

SECTION 9—STATE CONSTRUCTION SAFETY AND HEALTH PLANS

Section 9(i) provides that any State plan that covers construction safety and health shall comply with the requirements of section 18(c) of the Occupational Safety and Health Act (29 U.S.C. § 667(c), and shall provide for the development and enforcement of requirements that are and will be at least as effective in providing safe and healthful employment in the construction industry as the requirements imposed by (and the enforcement of requirements under) this Act and the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 et seq.).

SECTION 10—GRANTS TO STATES

Section 10(h)(1) authorizes the Secretary of Labor to make grants to assist the States in administering and enforcing this Act through State plans approved by the Secretary pursuant to section 18 of the Occupational Safety and Health Act (29 U.S.C. § 667). Section 10(h)(2) provides that, for the first 3 years a State plan is in operation, the Federal share for each State grant shall, subject to appropriations, be up to 90 percent of the total cost to the State of such a program. Beginning with the fourth year the State plan is in operation, the Federal share for the plan shall constitute 50 percent of the total cost to the State of the program, and, if the Federal share for all States is not the same, the differences among the States are to be established on the basis of objective criteria.

SECTION 11—REPORTS

Section 11(a) requires the Secretary of Labor, with the advice and assistance of the Deputy Assistant Secretary of Labor for Construction and the Advisory Committee on Construction Safety and Health, to prepare and submit to the President for transmittal to Congress an annual report on the same general subjects the Secretary is required to report on by Section 26 of the Occupational Safety and Health Act (29 U.S.C. § 675), as those subjects relate to the construction industry, including the operation of the Office of Construction Safety, Health and Education.

Section 11(b) requires that within 120 days following the conclusion of 3 years of operation of the Office of Construction Safety, Health and Education, the Secretary of Labor, with the advice and assistance of the Deputy Assistant Secretary of Labor for Construction and the Advisory Committee on Construction Safety and Health, shall prepare and submit to the President for transmittal

to Congress a report on whether the then existing conditions of occupational safety and health in the construction industry, the effectiveness of regulation and enforcement under this Act by the Office, and any other relevant information support the continued existence of the Office within the Occupational Safety and Health Administration or support the enactment of legislation to establish in the Department of Labor a Construction Industry Safety and Health Administration to be headed by an Assistant Secretary of Labor for Construction Safety and Health.

SECTION 12—SAFETY RECORD AND FEDERAL CONSTRUCTION CONTRACTS

Section 12 requires that the Secretary of Labor review all laws describing criteria by which Federal construction contracts are awarded. On the basis of this review, within 90 days after the date of enactment of this section, the Secretary is to deliver to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate the recommendations of the Secretary regarding legislative changes required to make the safety records (including records of compliance with safety and health laws and regulations) one criterion considered in the awarding of Federal construction contracts.

SECTION 13—EFFECTIVE DATE

Section 13(a) provides that this Act becomes effective on October 1, 1991. Section 13(b) is a "savings clause" ensuring that nothing contained in this Act, or the regulations issued to carry it out, shall limit the application of, or lessen, any of the requirements of the Occupational Safety and Health Act or the Contract Work Hours and Safety Standards Act or the standards or regulations issued by the Secretary of Labor to carry out either such Act.

X. MINORITY VIEWS OF MESSRS. HATCH AND THURMOND

After studying this legislative proposal, I must strongly oppose S. 930. I believe that any legislative proposal designed to achieve safe and healthy working conditions in the construction industry must satisfy four essential criteria. First, the purposes of the legislation must be achieved in an efficient and effective manner. Second, mandatory provisions that are imposed upon employers must be based on well-researched evidence in sufficient quantity to permit as much certainty of outcome as possible. Third, the scope of the law must be confined to those areas for which there will be demonstrable benefits from statutory requirements. Finally, the law must be based on an understanding of the industry and its operations. The construction industry is both time sensitive and labor intensive. As such, legislative proposals must take these characteristics into consideration when attempting to fashion regulatory conditions. S. 930 fails to satisfy any of these criteria adequately and is not worthy of support.

I. Summary of the Issues

A. Improving safety and health conditions in the construction industry is a nonpartisan, nonobjectionable objective. Advancing this purpose led the majority to craft this legislation, the minority to urge immediate administrative measures to be taken, and the administration to promulgate and implement administrative measures. The latter has included measures that address most of the objectives established for S. 930.

This procedural difference frames the threshold issue. The majority holds that legislation is preferable because it cannot be revised through administrative means. The minority holds that administrative measures allow OSHA greater flexibility for further development, modification, and refinement of these measures. Moreover, all interested parties can be consulted. OSHA has stated its intention to elicit advice and seek peer review from affected parties and outside experts, a process which ensures that the regulated community is aware of and receptive to its new obligations.

B. The administrative measures promulgated and implemented by OSHA do not address all the objectives established for S. 930 by its sponsors. Of those objectives which remain, the majority believes that several can and should be addressed by administrative measures as well. However, the experts at OSHA have asked to be given time to conduct research in order to gain the knowledge which will permit the future promulgation and implementation of such measures.

This lack of knowledge frames the second issue. Quite simply, the majority argues that such actions have been delayed too long and should be delayed no longer. While I agree that the necessary

research should have begun earlier, we must not ignore the fact that sound public policy cannot be formulated in ignorance.

C. The objectives remaining for S. 930 are six-fold: (1) establishing a requirement that an overall safety and health plan for a construction site be established; (2) requiring the presence of a "competent person" on a job site with authority to stop work and remove employees from the affected area; (3) establishing an internal "permit system;" (4) mandating appointment of a Deputy Assistant Secretary within the OSHA; (5) increasing the authority of an existing advisory committee on construction safety; and (6) requiring that a person be designated by a construction owner to have overall responsibility for safety and health on a construction site.

Such new, overreaching obligations are not appropriate. The sponsors assert that these changes are reasonable and "necessary to alleviate the problems at hand." In contrast, I believe that insufficient evidence has been offered to demonstrate that these specific obligations will result in overall improvements in safety and health in the construction industry. It is inappropriate to suggest harsher criminal penalties before: (1) OSHA has demonstrated it can sustain meaningful efforts to provide practical information to the hundreds of thousands of small, family-owned construction firms throughout the U.S.; (2) the impact of these efforts can be fully assessed; and (3) the impact of other OSHA efforts, including its new policy on egregious violations, can be fully assessed. Moreover, serious questions have been raised concerning the ability of these obligations to achieve meritorious purposes. In fact, the weight of evidence suggests negative consequences may very well exceed any potential benefit.

II. Effective Administrative Actions Taken at OSHA

During testimony before the House Subcommittee on Health and Safety in June 1990, Assistant Secretary for Occupational Safety and Health Gerald Scannell stated unequivocally that "Secretary Elizabeth Dole and I are committed to substantially increasing OSHA's efforts to improve safety and health conditions in the construction industry. We are convinced that there is much we can do under existing law . . . [and are] on course in pursuing the major goals" of [S. 930]. Assistant Secretary Scannell cautioned, however, "We need to retain the flexibility to make needed changes in the construction program, and to revise the program as needed in response to future changes in the structure and hazards of the industry." In this statement are the two threshold questions: One, has the Department of Labor taken reasonable steps to achieve the legitimate purposes of this legislation, and two, should such any administraive action be locked in by law so that necessary adjustments cannot be made?

A. BACKGROUND

Even before S. 930 was introduced, shortly after taking office, Secretary of Labor Elizabeth Dole and newly appointed Assistant Secretary Gerald Scannell announced they would comprehensively assess OSHA's organization, regulations, budget, and staffing,

training programs, and enforcement capabilities as they relate to the construction industry. A month before S. 930 was introduced, in April 1989, a special task force of senior level OSHA managers was impaneled and charged with developing a number of specific recommendations to effectuate this general objective.

These recommendations were formulated with input from interested parties and only following well researched analysis. As Assistant Secretary Scannell stated in June 1990 testimony before the House Subcommittee on Health and Safety, "the first step in correcting deficiencies is to get expert advice." Mr. Scannell continues, "Soon after I took office I met with OSHA's Advisory Committee and Construction Safety and Health to listen to their ideas and seek specific advice. I have met with them since and intend to continue to seek their counsel on any major agency initiative in Construction."

Regarding this advice and counsel, Secretary of Labor Dole concluded in a July 31, 1990 letter contained in the hearing record, that "the flexibility accorded OSHA under the Occupational Safety and Health Act and the administrative law process ensuring comments by all affected parties is better suited to addressing the problems." Consonant with this conclusion, the Department of Labor began implementing the recommendations made by the task force shortly thereafter.

B. SPECIFIC ADMINISTRATIVE MEASURES IMPLEMENTED AT OSHA

1. OSHA Office of Construction and Engineering.—OSHA has already established an Office of Construction and Engineering. According to OSHA, one purpose of this Office is to focus on certain unique problems of the construction industry. Twelve new positions were added to the Office for a total of 21 staff persons exclusively devoting attention to construction safety and health. According to OSHA, each of these staff persons possess direct field experience in construction. This team of experts will investigate construction accidents, provide technical assistance to agency compliance officers, and work closely with industry and labor groups in improving construction safety and health.

2. Branch of Construction Safety and Health Training.—OSHA has established this branch of its training institute to provide improved curriculum that includes basic, intermediate, and advanced training in construction safety and health for OSHA's compliance officers, state personnel, and private sector personnel who want to learn how to reduce construction hazards.

3. Increases in OSHA Compliance Staff.—OSHA requested, and was provided, an 11 percent increase in its compliance staff in the past fiscal year. Moreover, OSHA has made commitments to make reasonable efforts to further increase the compliance staff. While these total increases in OSHA's compliance staff will not devote exclusive attention to the construction industry, it must be remembered that more than 50 percent of OSHA's annual compliance investigations are in the construction area.

4. Small Business Liaison for Construction Safety and Health.—This new Special Assistant to the Assistant Secretary will work with the small business construction companies to coordinate and

provide an informational link with the Office of Construction and Engineering.

5. Regulatory Initiatives in the Construction Area.—In the recent past, OSHA has finalized several important new regulations in the construction area, including Trenching and Excavation and Stairways and Ladders. The new standard covering excavation work is expected to prevent approximately 74 deaths and 3,000 lost workdays each year. Several other new initiatives are near completion.

III. Administrative Actions at OSHA Currently Under Review and Scheduled for Appropriate Action Following Analysis

A number of recommendations made by OSHA's internal and external advisors listed several alternatives for accomplishing improvements at OSHA in the area of construction safety and health. Other ideas for improvements posed particular questions which required obtaining additional knowledge preceding action. In light of these considerations, OSHA has informed the Congress that more changes will be made subject to this informational gaining process, and has listed a number of these possible changes and concerns which are being researched.

A. Targeting Inspections to Hazardous Operations.—Currently, OSHA's targeting system is a system of random selection, executed through a contract with the University of Tennessee, which periodically mails out lists of these "targeted" sites to OSHA's 90 area offices throughout the country. OSHA is currently investigating methods which could be used to target inspections to the most hazardous industries; an objective also established for S. 930.

In testimony before the House Subcommittee on Safety and Health, Assistant Secretary Scannell stated that OSHA has begun four pilot projects to gain information in this area. "We begin the pilot projects with no preconceptions as to the best way to go," Scannell indicated. "Our experience with the projects will determine which, if any, new procedures will be adopted." These four pilots are designed to accomplish the following, according to Assistant Secretary Scannell: (1) focus on the five most hazardous construction industrial categories; (2) allow Area Directors to use local knowledge obtained through visual observation or from sources as local chapters of construction associations and local building trades unions; (3) use information obtained from local building authorities; and (4) construct inspections of particular hazards, such as trenching, steel erection, or fall hazards.

B. Multiple Inspection Procedures.—OSHA's current procedures for scheduling inspections requires that an inspected work site not be revisited on a programmed inspection for a specified period of time. Currently, OSHA is investigating possible revisions to this policy which would permit scheduling inspections at the same construction project as frequently as necessary to insure that the work site is inspected during certain hazardous operations.

C. Accident Reporting.—Currently, OSHA requires that employers report to the agency within 48 hours any deaths or multiple hospitalizations. OSHA is currently evaluating, via a formal notice in the Federal Register, inquiring views on whether this particular regulatory requirement is too long. OSHA has indicated that, based

on information obtained, this regulation may be altered to the time interval for reporting.

D. Control of Accident Sites.—OSHA is currently evaluating the need to take control of an accident site in order to preserve evidence. OSHA has indicated their belief that current statutory authority would permit promulgation of regulations to this effect of their investigation indicates the appropriateness of such regulatory action.

IV. Provisions in S. 930 Which Would Detract From Rather Than Add to Workplace Safety and Health

As cited above, Assistant Secretary Scannell testified before the House Subcommittee on Health and Safety relative to the Administration's efforts in pursuing the major goals and purposes of the proposed legislation. At the same time, however, he encouraged Congress to allow the Department the capability to retain the flexibility needed to make changes in the construction program. Mike Ellis, president of the National Utility Contractors, testified before the same committee last June, "Creating more bureaucracy would have little, if any, positive impact unless its resources were better targeted toward education and training, as opposed to simply regulation and enforcement."

In short, the bureaucratic regulations and restrictions imposed by this legislation would only further hamstring the good faith efforts of OSHA in its attempts to make the workplace safer and healthier for all Americans. A few examples of proposed excessive bureaucratic regulations should help illustrate this point.

A. Filing Project Descriptions With OSHA Prior to Commencements of Construction

The purpose of this recommendation, presumably, is to give OSHA officials some idea of where potentially "high-risk" projects are being constructed in an effort to target their enforcement efforts. If adopted, however, this proposal would result in OSHA receiving literally hundreds of forms daily, necessitating the hiring of scores of new employees in order to process the deluge of paperwork. Concludes Mr. Ellis, "The bureaucracy that would be needed to implement a project registration program effectively would be staggering in numbers and costs entailed."

B. Requiring Employers to Retain a Registered Professional as a Construction Safety Specialist

This section makes an unprecedented attempt to regulate the commercial relationships among independent entities by transforming a statute intended to regulate the relationship between employers and employees. Employers should retain the flexibility to hire a professional if they feel a certain type of project requires their expertise. However, we are certain that everyday safety concerns can be dealt with adequately by a fully-trained, experienced construction job foreman or other senior employee.

C. REQUIRING EMPLOYERS TO MAINTAIN DETAILED RECORDS ON ALL ACCIDENTS

This is yet another overly broad provision, requiring each prime contractor and subcontractor on a project to keep records on incidents involving not only their own employees, but also other employer's employees. Additionally, this legislation would give OSHA the unbridled discretion—without limitation—to determine the amount of civil penalties for failing to comply with the bill's exceptionally onerous record-keeping requirements.

D. ALLOWING ANY EMPLOYEE OR LABOR REPRESENTATIVE TO HALT WORK ON A CONSTRUCTION SITE

Any employee or labor representative may halt work on a construction site if he or she feels imminent danger exists. It is interesting to note that if the Construction Safety Specialist provided for by the legislation discovers an unsafe work practice or violation of a law or regulation, he or she is only required to "inform" the contractor of the imminent danger and "notify" them to correct the unsafe condition or practice. However, nowhere is that person required to halt work on a project. Yet an employee, who doesn't have the training or safety acumen of the construction safety specialist, can bring the project to a halt.

E. REQUIRING EMPLOYEES TO OBTAIN PERMITS FROM EMPLOYERS

This provision creates yet more bureaucratic labyrinths by requiring employees to seek a permit from his or her own employer before beginning hazardous work. Incidentally, the term "hazardous work" has not yet been defined nor has the exact meaning been determined. Enforcement for violation would be effected by "private parties", rendering the entire process meaningless. The only result would be more paper, more bureaucracy, and more confusion. Given the nature of multi-employer worksites in an age of increased specialization, an entirely new littany of questions would inevitably arise: Who obtains permission from whom and for what?

V. Areas of Concern Not Addressed by S. 930

Witnesses before the Subcommittee on Labor have raised two issues which the majority has failed to address in any of the provisions of S. 930: employee accountability and substance abuse. We should like to briefly touch upon these areas of concern.

A. EMPLOYEE ACCOUNTABILITY

President Kirk Fordice of the Associated General Contractors has stated the following:

> The Associated General Contractors believes it is time to recognize that employees share at least some of the responsibility for jobsite safety and health. OSHA should be involved in the effort to encourage workers to work safely. Just as employers must accept the responsibility to provide safe working conditions, so too must employees accept the responsibility to work in a safe manner.

It is not reasonable to invest time, energy and money into elaborate safety training for employees and then expect no compliance from them regarding this education. If an employee is trained—through media involving written, oral, and audio-visual and demonstrative methods—to wear a hard hat, and that employee chooses to remove this hat, knowing the risks involved, shouldn't he or she hold some personal responsibility should an injury occur as a result of the employee's negligence?

Studies of safety and health data have found that unsafe actions account for a great majority of jobsite accidents. For example, E.I. Du Pont Nemours & Company has compiled one of the best safety records in the United States, and recently found that 90% of all workplace accidents were the result of unsafe actions by employees. Other studies have found the following: a Bureau of Labor Statistics study indicates that nearly 70% of all chemical burns are classified as injuries due to employee error; a Bonneville Dam project study found that unsafe actions cause seven times the number of accidents than those caused by unsafe conditions.

B. SUBSTANCE ABUSE

Substance abuse is also a serious problem in the workplace and is particularly troublesome in an industry as dangerous as construction. A recent study conducted by the Institute for a Drug-Free Workplace indicates some very grave trends among American workers today: 49% acknowledged that illegal drug use occurs in their workplaces; 41% said drug usage by employees in their organization "seriously affects" their ability to get the job done; 24% have "personally seen or heard" of illicit drug use by co-workers while on the job. Incidentally, 81% of those surveyed were in favor of drug testing for construction workers.

Employers, especially those in dangerous industries must be able to detect and eliminate drugs from the worksite if safety is to be achieved. Again, the majority failed to address substance abuse in any provisions of S. 930, thus ignoring an area of serious gravity and one which must be dealt with immediately.

VI. Budget Impact

We wish to point out that the CBO estimates the cost of this bill to be $188 million over five years; ironically, this is the amount of money the Labor Committee was to raise through increased OSHA penalties. So, it appears that the increases in OSHA penalties will not be devoted to deficit reduction; they will be spent for implementation of these new regulatory mandates.

VII. Conclusion

As noted above, the Occupational Safety and Health Administration has taken considerable steps in confronting the concerns addressed in this bill. We are convinced that written requirements for safety and health programs cannot and should not be formulated into a "one-size-fits-all" mandate imposed on all businesses, large and small. Moreover, not addressed in this legislation are elements which we believe are essential in achieving construction safety. Misguided legislative measures intended to alleviate certain areas

of concern while ignoring others of equal gravity should not be employed in such a manner. Assistant Secretary Scannell, whom we have quoted extensively in this report, has urged the Congress to allow the Administration to deal with the problems of occupational safety and health via administrative means before resorting to legislative action. We support him in this request and urge our colleagues to reject S. 930 as an overly burdensome and onerous piece of legislation which is destined to do much more harm than good.

ORRIN G. HATCH.
STROM THURMOND.

XI. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

* * * * * * *

NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS

SEC. 27. (a)(1) * * *

* * * * * * *

SEC. 28. OFFICE OF CONSTRUCTION SAFETY, HEALTH, AND EDUCATION.

(a) ESTABLISHMENT.—There is established in the Occupational Safety and Health Administration an Office of Construction Safety, Health, and Education (hereinafter in this section referred to as the "Office") to ensure safety and healthful working conditions in the performance of construction work.

(b) DUTIES.—The Secretary shall—

(1) develop mandatory standards for construction safety and health plans and programs established under section 29;

(2) assume control of a construction site to—

(A) prevent the destruction of any evidence that would assist in the investigation of a fatality, serious injury, or incident unless it must be moved or destroyed as a part of rescue operations; and

(B) monitor the rescue operations conducted in response to the incident;

(3) assist the Advisory Committee on Construction Safety and Health in the development of training courses and curriculum for the Construction Safety and Health Academy;

(4) consult with and advise construction employer associations, construction employers, construction employees, and labor organizations as to effective means of preventing serious injuries in construction work and ensure equal access to the consultative services;

(5) increase awareness of construction site safety through education, training, and outreach programs;

(6) promulgate regulations requiring construction employers who have high frequency rates of fatalities or serious injuries or who have demonstrated a pattern of noncompliance with health and safety standards, rules, or regulations to establish, implement, and comply with special health and safety programs to be approved by the Secretary;

(7)(A) develop and implement such regulations as are necessary to ensure compliance with this Act;

(B) ensure that the regulations are appropriate and adequate to provide for the safety and health of employees employed by firms of different sizes, types of work, and past safety records, including records of compliance with safety and health laws and regulations; and

(C) make available materials necessary for compliance with this Act to project constructors, employers, and employees; and

(8) carry out the duties in subsections (h) through (k) of section 8 and in section 29.

(c) PERSONNEL.—

(1) DEPUTY ASSISTANT SECRETARY OF LABOR FOR CONSTRUCTION.—

(A) ESTABLISHMENT.—There is established within the Occupational Safety and Health Administration the position of Deputy Assistant Secretary of Labor for Construction, to be appointed by the Secretary.

(B) DUTIES.—The Deputy Assistant Secretary of Labor for Construction shall—

(i) coordinate the activities of the Office with the activities of other offices and directorates within the Occupational Safety and Health Administration to the extent that the activities of those other offices and directorates relate to safety, health, and education in the construction industry; and

(ii) coordinate the activities and advice of the Advisory Committee on Construction Safety and Health with the activities of all offices and directorates within the Occupational Safety and Health Administration relating to safety, health, and education in the construction industry, and to ensure that the Advisory Committee performs the functions set forth in this Act and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.).

(2) ADDITIONAL INSPECTORS.—

(A) EMPLOYMENT.—The Secretary shall employ such additional inspectors as are necessary to carry out the duties of the Secretary prescribed in sections 8 and 29. The inspectors shall be in addition to inspectors employed under this Act on the effective date of this section.

(B) QUALIFICATIONS AND TRAINING.—The Secretary, with the advice of the Advisory Committee on Construction Safety and Health, shall determine the necessary qualifications and training requirements for inspectors employed pursuant to this paragraph. The qualifications and requirements shall, at a minimum, include—

(i) a full understanding of this Act and the Secretary's standards and regulations applicable to the construction industry; and

(ii) at least 5 years of experience working in the construction industry.

(3) SMALL BUSINESS LIAISON.—

(A) DESIGNATION.—The Director shall designate an employee of the Office to serve as a small business liaison.

(B) DUTIES.—The liaison shall be responsible for providing assistance for complying with new and existing standards under this Act for the performance of construction work (in the form of manuals, videos, and audiotapes and other outreach programs) to trade associations and other small businesses.

SEC. 29. CONSTRUCTION SAFETY AND HEALTH PLANS AND PROGRAMS.

(a) PROJECT CONSTRUCTORS—

(1) IN GENERAL.—For every construction project covered by this Act, a project constructor shall be designated in a contract with the construction owner.

(2) HOMEOWNERS.—In no event shall a homeowner be designated as project constructor on a project involving work on the homeowner's own residence.

(3) DUTIES.—The project constructor shall have overall responsibility for the safety and health of all construction employees at a construction worksite and shall perform the duties of project constructors set out in this Act and the regulations issued under this Act.

(b) CONSTRUCTION SAFETY AND HEALTH PLANS AND PROGRAMS.—

(1) INTERIM REGULATIONS.—

(A) IN GENERAL.—Not later than 60 days after the effective date of this section, the Secretary shall promulgate interim regulations to provide for the establishment of construction safety and health plans and programs in accordance with this section.

(B) REQUIREMENTS.—The interim regulations shall include all the requirements set forth in this section, including the following:

(i) PLANS.—The Secretary shall develop and implement regulations appropriate to firms of different sizes, types of work, and past safety records (including records of compliance with safety and health laws and regulations) under which project constructors shall establish and implement written safety and health plans that shall include the project safety and health programs of the construction employers involved in the projects. In issuing the regulations, the Secretary shall ensure that with respect to covered projects—

(I) the plans be set forth or incorporated by reference in contract documents for projects;

(II) project constructors shall indicate in writing on plan documents their approval of plans; and

(III) copies of plans be available to construction employers prior to commencement of and during construction.

(ii) HAZARD ANALYSES; CONSTRUCTION PROCESS PLANS.—The Secretary shall develop regulations appropriate to firms of different sizes, types of work, and past safety records (including records of compliance with safety and health laws and regulations) under which construction employees are protected from hazards anticipated during construction through—

(I) hazard analyses that identify the potential for and provide instructions for the prevention of hazards in the construction process; and

(II) construction process plans that include means to ensure the structural stability of worksites, inspections of worksites, and references to the hazard analyses.

(C) EFFECTIVE DATE.—The interim regulations shall take effect on issuance and shall apply until final regulations become effective under paragraph (2).

(2) FINAL REGULATIONS.—

(A) IN GENERAL.—Not later than 180 days after the effective date of this section, the Secretary shall develop and implement final regulations to carry out this section that are appropriate to firms of different sizes, types of work, and past safety records (including records of compliance with safety and health laws and regulations).

(B) RELATIONSHIP TO INTERIM REGULATIONS.—The final regulations shall include each of the requirements of the interim regulations established by paragraph (1).

(C) EFFECTIVE DATE.—The final regulations shall become effective 60 days after the date on which the regulations are promulgated.

(c) PROJECT SAFETY COORDINATORS.—The Secretary shall develop and implement (in accordance with parapraphs (1)(A) and (2) of subsection (b)) regulations appropriate to firms of different sizes, types of work, and past safety records (including records of compliance with safety and health laws and regulations) under which—

(1) project constructors shall designate project safety coordinators for construction projects;

(2) project constructors may not assign overall responsibility for the safety of contruction projects to the project safety coordinators; and

(3) construction employers shall be notified of the identity of projects safety coordinators.

(d) MONITORING SAFETY.—

(1) IN GENERAL.—The Secretary shall develop and implement (in accordance with paragraphs (1)(A) and (2) of subsection (b)) regulations appropriate to firms of different sizes, types of work, and past safety records (including records of compliance with safety and health laws and regulations) under which project safety coordinators, on behalf of project constructors, adequately monitor safety at construction sites.

(2) REQUIREMENTS.—The monitoring shall include—

(A) notifying construction employers of noncompliance and hazardous conditions, and the subsequent notification of the Secretary, construction owners, and project constructors, if the hazards or noncompliance are not corrected; and

(B) the administration of project safety plans and maintenance of detailed safety reports with respect to construction sites, including fatalities, injuries, and incidents at worksites, and information concerning hazardous conditions and unsafe practices.

(e) COMPLIANCE.—The Secretary shall develop and implement (in accordance with paragraphs (1)(A) and (2) of subection (b)) regulations appropriate to firms of different sizes, types of work, and past safety records (including records of compliance with safety and health laws and regulations) under which project safety coordinators, on behalf of project constructors, prepare the project safety and health plans prior to commencement of construction and ensure the compliance of construction employers with reporting requirements under this Act.

(f) PERMIT SYSTEMS.—

(1) IN GENERAL.—The Secretary shall develop and implement (in accordance with paragraphs (1)(A) and (2) of subsection (b)) regulations appropriate to firms of different sizes, types of work, and past safety records (including records of compliance with safety and health laws and regulations) under which project safety coordinators, on behalf of project constructors, develop permit systems to authorize employers to engage in operations determined to pose a risk of death or serious injury.

(2) COVERED OPERATIONS.—The operations shall include—

(A) the construction of trenches and excavations;

(B) the erection and dimantling of scaffolding;

(C) the demolition of any building or structure;

(D) the operation of cranes and derricks;

(E) operations requiring employees to enter confined or enclosed spaces;

(F) operations involving exposure to one or more toxic substances; and

(G) other operations designated by the Secretary.

(3) COMPLIANCE.—In issuing the permits, project safety coordinators shall ensure that employers—

(A) are knowledgeable of and evidence intent to comply with the requirements of this Act and all standards and regulations issued by the Secretary; and

(B) have developed safety and health programs that adequately address the hazards presented by the covered operation in which the employers seek to engage.

(g) ADMINISTRATION.—

(1) IN GENERAL.—The Secretary shall develop and implement (in accordance with paragraphs (1)(A) and (2) of subsection (b)) regulations appropriate to firms of different sizes, types of work, and past safety records (including records of compliance with safety and health laws and regulations) under which construction employers involved in construction worksites of construction projects shall develop and implement project safety pro-

grams commensurate with the scope of the work of employers on the projects.

(2) REQUIREMENTS.—The programs shall provide that—

(A) construction employers appoint one competent person for each project to be responsible for the general administration of the program;

(B) a competent person shall be at each worksite at all times that construction employers are engaged in construction work; and

(C) the responsibilities and authorities of competent persons shall include frequent inspections of worksites and the taking of all actions necessary to eliminate hazards, including the stoppage of work or removal of affected employees if necessary.

(h) TRAINING.—

(1) IN GENERAL.—The Secretary shall develop and implement (in accordance with paragraphs (1)(A) and (2) of subsection (b)) regulations appropriate to firms of different sizes, types of work, and past safety records (including records of compliance with safety and health laws and regulations) under which the programs of construction employers provide that construction employees shall receive, or have received within the immediately preceding 12-month period, general safety and health training in a manner prescribed by the Secretary.

(2) COMPLIANCE.—The regulations shall include a procedure under which the Secretary can ensure that the training requirements are complied with.

(i) PROGRAMS.—The Secretary shall develop and implement (in accordance with paragraphs (1)(A) and (2) of subsection (b)) regulations appropriate to firms of different sizes, types of work, and past safety records (including records of compliance with safety and health laws and regulations) under which the programs of construction employers provide for—

(1) adequate worksite instruction in the recognition of unsafe and unhealthy conditions, applicable standards and regulations, the use of construction worksite equipment, the handling of toxic and harmful substances, and other matters that the Secretary may prescribe;

(2) emergency evacuation plans, procedures for regular inspections and emergency and special inspections, the reporting of incidents, regular safety meetings, and monitoring procedures; and

(3)(A) a procedure under which all employees and employee representatives may obtain an immediate inspection or a written evaluation, or both, of a perceived hazardous condition or harmful substance by a qualified person at any time in the construction process; and

(B) if it is determined that such a hazardous condition or harmful substance presents an imminent danger, the project constructor to stop work at, or remove affected construction employees from, the area in which the imminent danger exists.

SEC. 30. CONSTRUCTION SAFETY AND HEALTH ACADEMY.

(a) ESTABLISHMENT.—There is established in the Occupational Safety and Health Administration a Construction Safety and Health Academy (hereinafter in this section referred to as the "Academy").

(b) FUNCTIONS.—The Academy shall be responsible for the training of—

(1) employees of the Occupational Safety and Health Administration who conduct inspections of construction worksites;

(2) construction employers and employees; and

(3) other persons as the Secretary, with the advice of the Advisory Committee on Construction Safety and Health, considers appropriate.

(c) COOPERATIVE AGREEMENTS.—In carrying out this section, the Academy may enter into cooperative educational and training agreements with educational institutions, State governments, labor organizations, and construction industry employers.

(d) EQUAL ACCESS.—The Secretary and the Academy shall ensure that construction employees, construction employee representatives, and construction employees have equal access to the services made available pursuant to this section.

SEC. 31. REPORTS.

(a) ANNUAL REPORTS.—The Secretary, with the advice and assistance of the Deputy Assistant Secretary of Labor for Construction and the Advisory Committee on Construction Safety and Health, shall prepare and submit to the President for transmittal to Congress an annual report on the same general subjects as are set forth in section 26, as the subjects relate to the construction industry, including the operation of the Office of Construction Safety, Health, and Education.

(b) EFFECTIVENESS REPORT.—Within 120 days following the conclusion of 3 years of operation of the Office, the Secretary, with the advice and assistance of the Deputy Assistant Secretary of Labor for Construction and the Advisory Committee on Construction Safety and Health, shall prepare and submit to the President for transmittal to Congress a report concerning whether the then existing conditions of occupational safety and health in the construction industry, the effectiveness of regulation and enforcement under this Act by the Office, and any other relevant information supports the continued existence of the Office within the Occupational Safety and Health Administration or supports the enactment of legislation to establish in the Department of Labor a Construction Industry Safety and Health Administration to be headed by an Assistant Secretary of Labor for Construction Safety and Health.

[ECONOMIC ASSISTANCE TO SMALL BUSINESSES

[SEC. 28. (a) Section 7(b) of the Small Business Act, as amended, is amended—

[(1) by striking out the period at the end of "paragraph (5)" and inserting in lieu thereof "; and"; and

[(2) by adding after paragraph (5) a new paragraph as follows:

[“(6) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting additions to or alterations in the equipment, facilities, or methods of operation of such business in order to comply with the applicable standards promulgated pursuant to section 6 of the Occupational Safety and Health Act of 1970 or standards adopted by a State pursuant to a plan approved under section 18 of the Occupational Safety and Health Act of 1970, if the Administrative determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph.”

[(b) The third sentence of section 7(b) of the Small Business Act, as amended, is amended by striking out “or (5)” after “paragraph (3)” and inserting a comma followed by “(5) or (6)”.

[(c) Section 4(c)(1) of the Small Business Act, as amended, is amended by inserting “7(b)(6),” after “7(b)(5),”.

[(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b)(6) of the Small Business Act, as amended, pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

[ADDITIONAL ASSISTANT SECRETARY OF LABOR

[SEC. 29. (a) Section 2 of the Act of April 17, 1946 (60 Stat. 91) as amended (29 U.S.C. 553) is amended by—

[(1) striking out “four” in the first sentence of such section and inserting in lieu thereof “five”; and

[(2) adding at the end thereof the following new sentence, “One of such Assistant Secretaries shall be an Assistant Secretary of Labor for Occupational Safety and Health.”.

[(b) Paragraph (20) of section 5315 of title 5, United States Code, is amended by striking out “(4)” and inserting in lieu thereof “(5)”.

[ADDITIONAL POSITIONS

[SEC. 30. Section 5108(c) of title 5, United States Code, is amended by—

[(1) striking out the word “and” at the end of paragraph (8);

[(2) striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and the word “and”; and

[(3) by adding immediately after paragraph (9) the following new paragraph:

[“(10)(A) the Secretary of Labor, subject to the standards and procedures prescribed by this chapter, may place an additional twenty-five positions in the Department of Labor in GS–16, 17, and 18 for the purposes of carrying out his responsibilities under the Occupational Safety and Health Act of 1970;

[“(B) the Occupational Safety and Health Review Commission, subject to the standards and procedures prescribed by this chapter, may place ten positions in GS–16, 17, and 18 in carrying out its functions under the Occupational Safety and Health Act of 1970.”

[EMERGENCY LOCATOR BEACONS

[SEC. 31. Section 601 of the Federal Aviation Act of 1958 is amended by inserting at the end thereof a new subsection as follows:

["EMERGENCY LOCATOR BEACONS

["(d)(1) Except with respect to aircraft described in paragraph (2) of this subsection, minimum standards pursuant to this section shall include a requirement that emergency locator beacons shall be installed—

["(A) on any fixed-wing, powered aircraft for use in air commerce the manufacture of which is completed, or which is imported into the United States, after one year following the date of enactment of this subsection; and

["(B) on any fixed-wing, powered aircraft used in air commerce after three years following such date.

["(2) The provisions of this subsection shall not apply to jet-powered aircraft; aircraft used in air transportation (other than air taxis and charter aircraft); military aircraft; aircraft used solely for training purposes not involving flights more than twenty miles from its base; and aircraft used for the aerial application of chemicals."]

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[SEC. 34. This Act shall take effect one hundred and twenty days after the date of enactment.]

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TITLE 29—UNITED STATES CODE

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§ 652. Definitions

For the purposes of this chapter—

(1) The term "Secretary" means the Secretary of Labor.

* * * * * * *

(15) The term "Academy" means the Construction Safety and Health Academy established under section 30.

(16) The term "Advisory Committee on Construction Safety and Health" means the Advisory Committee established under section 107(e) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333(e)).

(17) The term "qualified person" means an individual who, by possession of a recognized degree, certificate, or professional standing and by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems relating to worker safety and health involving construction work.

(18) For purposes of subsections (h) through (k) of section 8 and sections 18(i), 28, and 29—

(A) The term "competent person" means one who, by knowledge, training, and experience, is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to construction employees of the construction employer who appointed the competent person under section 29(g), and who has authorization from the construction employer to take prompt corrective measures.

(B) The term "construction employer" means an employer (including a self-employed person) engaged primarily in the building and construction industry or who performs construction work under a contract with a construction owner.

(C) The term "construction employee" means an employee of a construction employer, including a self-employed construction employer, at such times as the employer personally performs construction work.

(D) The term "construction owner" means a person who owns, leases, or has effective control of property, with or without improvements, a structure, or other improvement on real property on which construction work is being, or will be, performed.

(E)(i) Except as provided in clause (ii), the term "construction work" means work for construction, alteration, demolition, or repair, or any combination thereof, including painting and decorating, and including such work performed under a contract between a construction employer and an agency of the United States or any State or political subdivision of a State.

(ii) The term "construction work" shall not include work performed under a contract between a construction employer and a homeowner for such work on the homeowners' own residence, unless the work involves a covered operation referred to in section 4(f)(2).

(F) The term "construction worksite" means a site where construction work is performed by one or more construction employers.

(G) The term "incident" means an event occurring at a construction worksite that involves—

(i) a structural failure;

(ii) a fire or explosion; or

(iii) any other class of incident as determined in regulations promulgated by the Secretary that could have caused death or serious injury had an individual been in proximity.

(H) The term "project constructor" means a person (including a construction manager, prime contractor, general contractor, or construction employer) who assumes the responsibility of a project constructor by contract or a construction owner who expressly assumes by contract the responsibilities of a project constructor.

(I) The term "project safety coordinator" means an individual who is—

(i)(I) designated by a project constructor; or

(II) if there is no project constructor, designated by the construction owner, to perform the duties prescribed by section 29; and

(ii) certified by the Academy or by an organization approved by the Academy as having fulfilled the requirements of a standardized training course and testing program developed or approved by the Secretary, with the advice of the Advisory Committee on Construction Safety and Health.

(J) The term "serious injury" means bodily injury or illness that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

* * * * * * *

§ 656. Administration

(a) * * *

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(d) In the performance of its duties prescribed in this section, and in section 107(e) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333(e)), the Advisory Committee on Construction Safety and Health shall have the authority to schedule meetings and set meeting agendas, establish subcommittees, conduct research and issue reports, retain experts and consultants, employ secretarial and clerical personnel, and purchase office equipment and research material as may be necessary to carry out its functions.

§ 657. Inspections, investigations, and recordkeeping

(a) * * *

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(h)(1) The Secretary shall establish an effective system for construction worksite inspections. In establishing the system, the Secretary shall establish priorities for construction worksite inspections and priorities for inspections within construction worksites intended to ensure that resources for enforcement are concentrated on construction worksites and operations having a high potential for fatalities or serious injuries.

(2) In establishing priorities under paragraph (1) with respect to construction worksites, the Secretary shall give due weight to—

(A) the records of compliance with this Act of the construction employers on the worksites, including compliance with recordkeeping and reporting requirements of this Act and with standards established under this Act and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.);

(B) the record of the compliance with this Act of the construction owners on the worksites; and

(C) the frequency and severity rates of fatalities, serious injuries, and attributable to particular construction owners and construction employers and particular types of construction projects, worksites, and operations.

(3) The Secretary shall develop and implement regulations appropriate to firms of different sizes, types of work, and past safety records (including records of compliance with safety and health laws and regulations) that require project constructors to submit to the Secretary prior to the commencement of construction work on a construction project such information as is necessary for the Secretary to develop and conduct the system of prioritized inspections required under this subsection.

(4) The inspection priority system required by paragraph (1) shall not have the effect of limiting—

(A) inspections conducted by the Secretary on the basis of complaints by construction employees or construction employee representatives or complaints of imminent dangers; or

(B) inspections intended as a followup to prior enforcement actions or proceedings.

(5) No construction owner or construction employer engaged in construction work shall be excluded by the Secretary from inspections conducted under this subsection.

(i)(1) Every project constructor shall make and maintain accurate records concerning fatalities, serious injuries, and incidents at a worksite.

(2) The records required under paragraph (1) shall contain—

(A) the name, business, address, and telephone number of the construction owner and project constructor and the name of the project safety coordinator;

(B) the location of the construction worksite;

(C) the name, business address, and telephone number of the construction employer whose construction employee was killed or injured;

(D) the date and time of the facilities, serious injuries, and incidents covered by the report;

(E) the type of fatalities, serious injuries, and incidents (such as whether the fatalities, serious injuries, and incidents involved a fire, explosion, or building callapse) covered by the report;

(F) the number and nature of fatalities or serious injuries;

(G) the number of persons who were hosptialized or received medical treatment as a result of the fatalities, serious injuries, or incidents;

(H) the number of persons unaccounted for at the time the report is made; and

(I) the identity and mailing address of the individuals responsible for investigating the fatalities, serious injuries, and incidents covered by the report.

(3) The information shall be available for any inspection conducted under this Act.

(j)(1) Except as otherwise provided in this subsection, a project constructor for a construction worksite shall report to the Secretary by telephone or telegraph (not later than 24 hours after the occurrence of the incident) any incident involving construction work that results in—

(A) a serious injury;

(B) a fatality; or

(C) a structural failure.

(2) Each report required under paragraph (I) shall specify—

(A) the name, business address, and telephone number of the construction owner of the project;

(B) the location of the project, the name of the project constructor and the project safety coordinator;

(C) the name, business, address, and telephone number of the construction employer whose construction employer was killed or seriously injured;

(D) the date and time of the occurrence of the incident with respect to which the report was made;

(E) the nature of the occurrence;

(F) the number of fatalities and serious injuries; and

(G) the number of persons who were hospitalized or received medical treatment.

(3)(A) The Secretary shall conduct an inspection of the construction worksite, or the pertinent area of the site, to investigate all reports of incidents described in paragraph (1), as the Secretary, by regulation, prescribes.

(B) The Secretary shall be granted access to the site.

(C) The Secretary shall conduct the inspection as soon as practicable, but no later than 24 hours, after receipt of a report under paragraph (1), unless the Secretary determines that conditions at the site would make an inspection dangerous.

(4) The project constructor shall take appropriate measures (as defined in regulations issued by the Secretary) to prevent the destruction of any evidence that would assist the Secretary in the investigation of the incident with respect to which the report was made.

(5)(A) As soon as practicable after the investigation, the Secretary shall prepare and make public a narrative description of the occurrence.

(B) The description shall include a statement of all of the items referred to in paragraph (2) and shall contain appropriate recommendations for the prevention of a similar incident in the future.

(C) A copy of the description shall be made available by the Secretary to the project constructor and shall be made available to employees and their representatives on request.

(k)(1) On the completion of a construction project or at intervals of 1-year duration of a project, whichever occurs earlier, the project constructor shall submit to the Secretary a report of all fatalities and serious injuries suffered by employees, and of all structural failures that occurred, on the project. If there have been no fatalities or serious injuries or structural failures, the report shall so state.

(2) The report under paragraph (1) shall provide—

(A) the name, business address, and telephone number of the construction owner and project constructor and each construction employer who was engaged on the project and the name of the project safety coordinator;

(B) the name of each construction employer whose employee suffered death or serious injury;

(C) a description of the name of the work performed by the construction employer on the project;

(D) a description of the nature of the work performed by each construction employee at the time the construction employee suffered death or serious injury; and

(E) the date of each such occurrence.

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§ 667. State jurisdiction and plans

(a) * * *

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(i)(1) Any State plan that covers construction safety and health shall—

(A) comply with the requirements listed in subsection (c); and

(B) provide for the development and enforcement of requirements that (and the enforcement of which requirements) are and will be at least as effective, in providing s and healthful employment and places of employment in the construction industry, as the requirements imposed by (and the enforcement of requirements under) this Act and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.), including requirements relating to—

(i) inspections, investigations, reporting, and recordkeeping;

(ii) construction safety and health programs;

(iii) onsite construction safety and health plans;

(iv) project safety coordinators; and

(v) the training and certification of State agency construction inspectors.

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§ 672. Grants to States

(a) * * *

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(g) Administration and enforcement of programs contained in approved State plans; Federal share

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(h)(1) The Secretary is authorized to make grants to States to assist the States in administering and enforcing the Construction Safety, Health, and Education Improvement Act of 1990, and amendments made by such Act, for programs approved by the Secretary pursuant to section 18.

(2)(A) The Federal share for each State grant under this subsection shall, subject to appropriations, for the first 3 years the plan is in operation, be up to 90 percent of the total costs to the State of such a program.

(B) Beginning with the fourth year the plan is in operation—

(i) the Federal share for the plan shall constitute up to 50 percent of the total cost to the State of the program; and

(ii) if the Federal share for all States under this subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

[(h)**]** *(i)* Report to President and Congress

Prior to June 30, 1973, the Secretary shall, after consultation with the Secretary of Health and Human Services, transmit a report to the President and to the Congress, describing the experience under the grant programs authorized by this section and making any recommendations he may deem appropriate.

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Amend the title so as to read:

A bill to amend the Occupational Safety and Health Act of 1970 to establish an Office of Construction Safety, Health, and Education, to improve inspections, investigations, reporting, and recordkeeping on construction sites, to require construction employers to establish construction safety and health plans and programs, and for other purposes.

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